Correspondence from Bill Leonard and Ray Haynes on California's 1999 Budget

CALIFORNIA★POLITICAL
REVIEW

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The Education Race
by Wayne Bishop

Those Dubious 'Down Ballot' Polls
by Tim Ferguson

Target Switzerland
A Book Review
by Peter Hannaford

DAN LUNGREN'S RUN FOR GOVERNOR

More than just a game of Reps and Dems

by John Kurzweil

California Judges' War on Property Rights

by

Gideon Kanner

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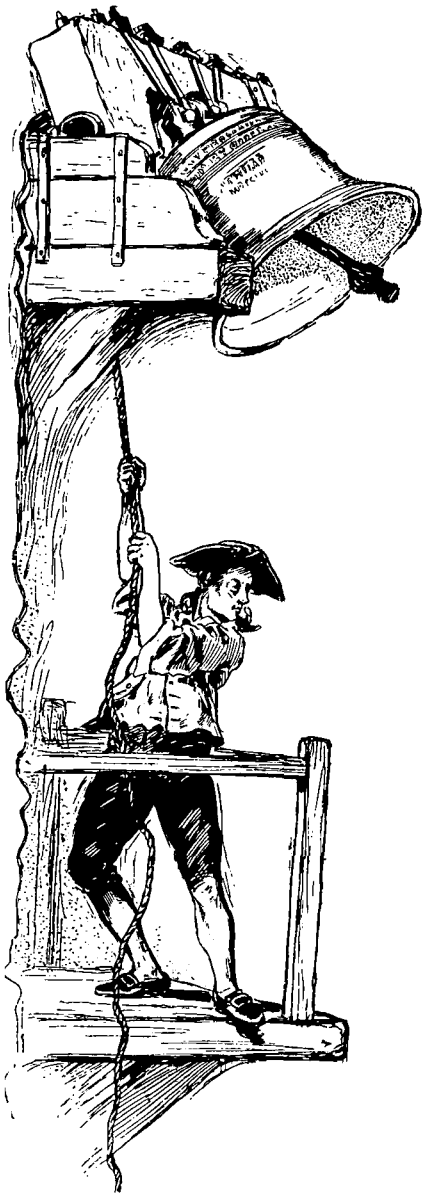

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CORRESPONDENCE

Leonard, Haynes on Zycher

Benjamin Zycher's article ("Woe Unto Us: California's 1999 Budget," *CPR*, July/August) makes several important points conservatives should keep in mind when thinking about state spending. The most important of these is a fact that conservatives concerned with big government have known since before Proposition 13 — government spending is limited by the availability of revenues.

The key to reducing government spending, then, is to reduce revenues. As predictable as this evening's setting sun, legislative liberals and their special interest constituencies will never stop demanding more tax dollars to buy more government. The only way to stop their appetite for spending is to cut revenues. No other approach at this time will effectively reduce the growth of government.

As Zycher points out, the clearest example of this is the effect of the recession on both tax revenues and spending. It is a sad commentary on the Legislature's Democrat majority that the pain of an economic recession is better at limiting spending than the Democrats. The recession's high unemployment rate slowed revenue growth, which significantly reduced the growth of state spending. Even after accounting for the emergency tax increase in the early 1990s, there is no disputing the fact that state government growth was slowest during the recession.

Only Republicans understand the need to cut taxes to control spending. In the last two years, Republican leadership has produced more than $2 billion in tax cuts. Just this year we negotiated a multi-year, $3.6 billion tax cut, of which $1.4 billion takes effect this year. Cutting taxes, specifically the car tax, was the central issue of the budget debate this summer. The debate over the car tax was not just about California's budget for next year, but it was also about the future of spending in California.

Make no mistake: Republicans know that the working men and women of California earn their paychecks and that the state should take as little as possible. Democrats never supported these tax cuts. In fact, they fought tax cuts every step of the way, and only agreed to them because Republicans insisted upon cutting taxes.

When we started budget negotiations with a $4.4 billion surplus, legislative Democrats already had a plan in place to spend every penny. Republicans knew that unless we cut taxes, Democrats and their special interests would spend the entire surplus and state government would be that much bigger. Fortunately, we cut taxes. Unfortunately, it is not enough in this growing economy to try to limit the growth of spending — we must continue to cut taxes until the size of government makes sense.

Bill Leonard
Assembly Republican Leader

Ben Zycher hit the nail on the head. Proposition 13 did not cut the size of government. California's 1998-99 budget was indeed a spending spree. Tax cuts were practically nonexistent and government growth continued unabated.

Witness the $9.2 billion bond. We spend $3.1 billion of our surplus on extras for state government (with more money in continuing revenues for ravenous school districts), gave a measly $1.3 billion tax cut, and borrowed $9.2 billion to build schools.

That revenue drives spending is not subject to debate. The question to ask is why, as Republicans, we not only tolerate that circumstance, but brag about our role in it. It is one thing to admit that Democrats forced us to abandon our tax cut and increase

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SACRAMENTO SPECTATOR

In an unusual burst of optimism, last issue your *Spectator* heaped praise on the governor and legislative Republicans for their handling of the car tax. Well, as Jill Stafford used to croon, what a difference a day makes. I hereby request those comments be stricken. I'm embarrassed: I allowed myself to think Wilson had grown a backbone or stumbled upon a political principle he recognized.

In a last minute bow to the governor's focus on style over substance, the GOP gave away most of the car tax, handing the Democrats and their allies a victory they in no way deserved. Wilson desperately wanted to "balance" his first term tax increases with an apparent $3.6 billion tax cut, to allow his presidential campaign to say he'd imposed no "net" tax increase on the citizens.

What Wilson and Republican legislative "leaders" agreed to is a sham, a tax cut in name only, one so tied to future revenue and spending increases that most of it will never materialize. The real pity is that the capitulation was entirely unnecessary. The Democrats had given ground three times when a united GOP made it obvious it was standing firm for a car tax reduction with no "triggers" or "asterisks" in the fine print.

What happened then is summarized by a poker analogy: Starting the final round holding all four aces, the Wilson-led GOP ended up splitting the pot. But Wilson has his "tax cut," at least on paper. Ditto the GOP's legislative "leaders." The legislative Democrats have a budget insuring huge future spending increases before most of this "cut" takes effect. And they delivered pork goodies to their various constituencies. Everybody won in this little charade — except taxpayers. And *this* is why hard-working Californians should bust their butts to win GOP legislative majorities in November? Somebody pass the air-sick bags, please.

Bubba Clinton and his hyperactive zipper may insure GOP legislative gains, no matter how undeserved. Not that we'll see a massive turn-out of voters clamoring for more Republicans in office to provide more cave-ins to Democrats. More realistically, the GOP base will vote election day while the Democrat base goes shopping or bowling or just hides at home, ashamed to admit membership in the same party as Satyr-in-Chief.

Surveys from around the country (as of Labor Day) show ominous signs of disinterest and disgust by core Democrat interest groups. While Satyr remains in office, he and his conduct remain the overriding issue in the media.

That, in turn, means Democrats (and their media allies) can't focus on the GOP's long-range plan to use enlarged congressional majorities to deny children adequate schools and medical care (while supplying assault rifles to the mentally unstable among them) and to destroy social security to starve seniors, enriching multinational corporations and sending jobs to Mexico whilst defoliating the rain forests.

If the Democrat base is disgruntled or embarrassed enough, what now looks like a narrow but comfortable Matt Fong win against Boxer could become a rout. That being the ballot's first contest, it could have positive effects for Lungren and the rest. 'Tis still a tad early to tell for sure. Stay tuned. Your *Spectator's* rarely-wrong-but-always-fearless election predictions arrive next time.

— A. P. C.

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THE LAW

Saving Tony Kline

What motivates Martha Escutia, the ACLU, and the ABA to defend liberal activist judges is plain: they think rule of law is just reactionary code for Stop the Revolution! But what about Bill Morrow, Tom McClintock, and Howard Kaloogian?

MARK S. PULLIAM

THE RECENT controversy (or, more accurately in certain circles, the lack of controversy) involving Justice J. Anthony Kline and the Commission on Judicial Performance provides a disturbing commentary on prevailing attitude toward judicial activism — which has, unfortunately, become so commonplace as to acquire an undeserved mantle of respectability. Yet judicial activism — the phenomenon of judges making decisions based on their personal predilections rather than application of the law — should be opposed on a bipartisan basis as not only a threat to, but the plain repudiation of, popular sovereignty and democratic self-government.

As Alexander Hamilton stated in *The Federalist* No. 78, "the judiciary ... will always be the least dangerous branch" of government because, by design, it is the weakest. Unlike the executive and legislative branches, "[t]he judiciary ... has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever." We've come a long way since the Constitution was ratified in 1789. In the process, and particularly in the last 60 years, the judiciary has regularly usurped powers the Framers intended to belong to the executive or legislative branches, or to be reserved by the people. Contrary to Hamilton's intentions, the judiciary has become the *most* dangerous branch of government, frequently imposing radical and controversial policy choices on society with little or no democratic accountability. Restraining activist judges ought to be a high priority for all citizens, and especially for conservatives committed to the rule of law. The Kline affair, described below, was (and remains) the perfect opportunity to strike a blow — at least symbolically — for reclaiming the prerogatives usurped by activist judges. Sadly, at least initially conservatives have not risen to the occasion.

Some background: Tony Kline is to liberals what Alex Kozinski or Robert Puglia is to conservatives — a quintessentially liberal judge, with impeccable liberal credentials. He served as Governor Jerry Brown's legal affairs secretary in the 1970s, and was appointed to the bench by Brown in 1980. With 18 years of seniority, the 59-year-old Kline is currently presiding justice of the 1st District Court of Appeal in San Francisco, an in-

Mark S. Pulliam, California Political Review's *legal issues correspondent, is an attorney in private practice in San Diego.*

Correspondence

(Continued from page 2)

spending because they can't control themselves. It is quite another to call our participation in that spending splurge a victory for California. That is, however, exactly what we did.

It is evidence that we didn't believe ours is the winning message. We fear that if we articulate an agenda of lower taxes, smaller government, more individual freedom, and free enterprise, we will lose elections. The problem is that we lose elections because we *don't* articulate that message.

Our muddled message, the message of fear, is, "We are not as bad as Democrats." It has been our battle cry for the last eight to ten years. Until we articulate a compelling, believable message of smaller government, less bureaucracy, and lower taxes, we will lose elections. More important, until we collectively articulate that message, we deserve to lose elections.

Ray Haynes, 36th district
California State Senate

Ben Zycher responds:

Many thanks to Senator Haynes and

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LEGISLATIVE FILE

The year's legislative session ended with the usual flood of bills. Lawmakers could work systematically through the year's bills, but that would make it easier to defeat foolish (*i.e.*, special interest) legislation, so irresponsible lawmakers prefer the annual end-of-session confusion. Expect this nonsense to continue as long as the idea that more government is always better reigns in the Capitol.

Each year brings a Gov. Pete Wilson-led cave-in on a major policy where Republicans held the political upper hand. Wilson's pattern is to talk tough, gaining popularity points, then, at the last minute, negotiate away the substance. In 1997, it was Welfare. In 1998, the issue was vehicle license fees and school bonds. Republicans say they will eliminate the car tax next year "if they win legislative majorities," but they had the political leverage to win this year and didn't use it. (See the discussions of these issues in this issue's "Correspondence," page 2, and "Sacramento Spectator," page 3.)

On other matters, amid the torrent, some bills to watch that, at press time, the governor had either signed or vetoed, or were were awaiting action on his desk:

Taxes — Pleasant news: the Legislature increased the state income tax deduction for dependents from $68 in 1997 to $253 in 1998. Also, Wilson signed a ban on new taxes on Internet transactions for the next three years.

Spending — dwarfed by the $9.2 billion school bond (appearing on the November ballot), a still-hefty half-billion dollars was appropriated in the session's closing moments: $245 million to purchase the Pacific Lumber Company's Headwaters Forest and another $243 million to line with concrete Southern California water canals delivering Colorado River water to San Diego. Wilson is expected to sign both measures.

Other bills passed that would: stop "social promotion," which moved public school students along through the grades even if they were failing; move California's 2000 presidential primary to the first Tuesday in March; require health plans to pay for prescription contraceptives, includes a (Democrat-opposed) exemption for religious organizations that oppose birth control; require health plans to cover mental illness whether the policyholder wants it or not, labeled a "job killer" by the California Chamber of Commerce; Don Perata's "Scary-looking gun" bill, banning certain hunting rifles that look like military weapons but fire the same as non-banned guns (Democrats call them "assault weapons").

What might have been — The Assembly defeated a Democrat proposal to extend term limits; also defeated was a measure by Assembly Speaker pro Tem Sheila Kuehl to create new opportunities to sue employers for "harassment" (adding independent contractors — the copy machine technician, say, or janitors, but not presidential interns — to the list of those filing suit); Senate Republicans led by Sen. Ray Haynes scuttled a last-ditch effort to fund the state Bar (derailing another Wilson last minute cave-in — the governor had championed dismantling the left-wing activist Bar on Rush Limbaugh's radio show); Democrats killed GOP bills to extend California's "10-20-Life" law to individuals who use guns when invading homes and to stiffen penalties for violent juveniles who use guns to commit crimes. CPR

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fluential position. He has a very liberal voting record on the bench. According to the *L.A. Times*, "Kline is widely considered a strong possibility to be tapped for the state Supreme Court if a Democrat is elected governor in the near future." In short, he is the poster boy for liberal activist judges.

THE COMMISSION on Judicial Performance (CJP) is an 11-member body established by the California Constitution to see to the discipline (ranging from a private admonition to removal from the bench) of judges for misconduct. Specifically, the CJP enforces the Code of Judicial Ethics, a set of rules governing the conduct of judges both on and off the bench. Pursuant to the California Constitution, the Code of Judicial Ethics is adopted by the California Supreme Court. As a result of Proposition 190 in 1994, the CJP now has a majority of non-judge members. The governor appoints four members, the Assembly Speaker and Senate Rules Committee each appoint two, and the Supreme Court appoints three judge members (one from each level of the judiciary — court of appeal, superior court, and municipal court). The current chair of the CJP, appointed by Governor Pete Wilson, is Robert Bonner, a respected former U.S. Attorney, federal district judge, and head of the Drug Enforcement Administration who is now a partner in a prestigious law firm in Los Angeles. The members of the CJP vary from crime victims advocate Harriet Salarno to Southern California ACLU head Ramona Ripston, married to notorious Ninth Circuit Judge Stephen Reinhardt, one of the most liberal and frequently-reversed judges in America.

The Kline affair: On June 30, the CJP commenced formal proceedings against Kline to determine whether his refusal to apply a controlling Supreme Court precedent in a December 1997 ruling constitutes "willful misconduct in office," "conduct prejudicial to the ad-

WHAT YOU HAVEN'T BEEN TOLD ABOUT GUN CONTROL

By WILLIAM E. SARACINO

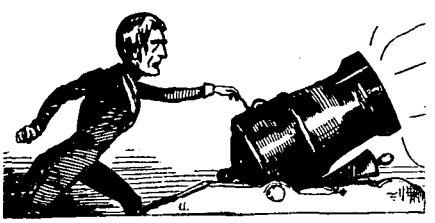
Inspired by the even more than usually ill-informed, not to say hysterical, debates on repealing the Second Amendment that characterized last year's legislative session, this new regular feature adopts the novel approach of considering Facts about guns, gun control, and gun owners.

'Childproof locks': panaceas for a non-existant crisis; another blow to our freedom

The modern anti-gun movement is succinctly summed up in the old debater's adage; "If you have the facts, argue the facts. If you don't have the facts, pound the table."

Viewed dispassionately, virtually every anti-gun shibboleth rests on emotion and is essentially void of facts. Such is the case with the current table-pounding for requiring "childproof locks" on guns. Consider the facts.

In 1995 — the most recent year statistics are available — there were 1,400 accidental deaths involving guns (compared, by the way, to 40,000 automobile deaths). 200 of those involved children under 15. This compares to 2,900 child fatalities in car crashes, 950 drownings, and more than 1,000 deaths from fire and burns. 450 children died in bicycle accidents that year.



Any child's death is tragic, and it's hardly consoling that common home fixtures such as swimming pools and space heaters are potentially lethal. But perspective is sadly lacking in this discussion.

In addition to addressing a problem of minuscule proportions, "childproof locks" cost precious seconds and minutes when a homeowner or woman needs to use a weapon to defend themselves or their families. Some people will decide to use the locks; others won't.

I have a unique suggestion to solve this problem: let the people decide what is best for them and their families. CPR

William E. Saracino is executive director of Gunowners of California.

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ministration of justice," and "dereliction of duty." Specifically, the CJP contends that Kline's admitted refusal to follow the law was in violation of the Code of Judicial Ethics, canons 2A ("A judge shall respect and comply with the law ....") and 3B(2) ("A judge shall be faithful to the law ..."). Kline, who was reversed by the Supreme Court in 1992 over a practice known as "stipulated reversal" (Kline doesn't approve of litigants being able to settle a lawsuit while it is on appeal, thereby vacating the judgment in the trial court, but the Supreme Court upheld the practice by a 6-1 vote), continues to oppose the practice even though he is subordinate to the Supreme Court and bound to follow its precedents. In his dissent in the 1997 *Morrow v. Hood Communications* case, Kline refused to grant a motion for stipulated reversal, even though he acknowledged that precedent compelled such a result, because "I cannot as a matter of conscience apply the rule" announced by the Supreme Court. Kline added that he would continue to deny such motions in the future, regardless of precedent, because he considers the precedent in question "unwise and even dangerous." (Kline does not, however, contend that the practice of stipulated reversal violates any constitutional provision; he simply disagrees with it.)

KLINE, WHO is sworn to uphold the law, is thumbing his nose at the California Supreme Court and refusing to follow the law on the basis of his personal beliefs. A more brazen example of judicial dereliction, and a more appropriate case for disciplinary action by the CJP, can scarcely be imagined. It is well-established that the decisions of the Supreme Court "are binding upon and must be followed by all the state courts of California .... Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court." *Auto Equity Sales, Inc. v. Superior Court,* 57 Cal. 2d 450, 455 (1962).

Liberals are firmly committed to judicial activism because they understand that much of the liberal political agenda has been successfully implemented by activist judges. Accordingly, the liberal establishment reacted hysterically to the CJP proceeding against Kline, which is still in its early stages. The left accurately perceives this as a symbolic showdown over judicial activism — the right of judges to rule according to their personal views as opposed to following the law. The tone of the left's denunciation of the CJP has been unusually shrill. The *L.A. Times* called it a "witch hunt in the courts" and an "inquisition." Left-wing USC law professor Erwin Chemerinsky called it "outrageous" and "chilling." The *Sacramento Bee* said it is "dangerous" and "scary." UC Berkeley law professor Stephen Barnett called it "judicial thought control." Senate President Pro Tem John Burton called it "the dumbest thing I've ever heard." Assembly Judiciary Committee Chairman Martha Escutia was "shocked and bewildered" by it. The ACLU called it a "drastic over-reaction" and a threat to "a vibrant judiciary." The California Judges Association recently intervened on Kline's behalf. Even the American Bar Association has gotten into the act. All of this criticism of the CJP amounts to the contention that judges are above the law — an obvious absurdity.

The unanimity and vociferousness of the liberals' re-

Correspondence

(Continued from page 4)

Republican Leader Leonard for their kind comments, and for their useful insights with respect to the relationship between revenues and spending. In addition to the analyses presented in their commentary and in my original article, there is another powerful reason that tax reduction is the *sine qua non* of spending reduction. Voters face conflicting motives politically. They want low taxes, but simultaneously seek to preserve government spending programs that benefit them. Efforts to cut particular programs face enormous political resistance, even among fiscally "conservative" voters, because they know that the dollars saved will be used to expand spending programs bestowing benefits largely upon others. There obviously exists no reason that they should support such an outcome. In order to induce taxpayers to support spending reduction they must be offered, in effect, a package deal: Fewer goodies from government combined with tax reduction, that is, more goods from the private sector. As long as government spending is a bad deal for taxpayers — on margin government costs more than it is worth — taxpayers will support such a package. That is why polls consistently show that taxpayers would support simultaneous tax and spending reduction.

Ben Zycher
Los Angeles

Mosk Not Driven by Ideology

I read Mark Pulliam's recent provocative *California Political Review* articles. Just as with the *Wall Street Journal,* whether I agree or not, I enjoy reading well-written pieces. Regarding

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Searching for a Reasonable Man

If your heart's desire is solitude and you need
To get away, craving lonely contemplation
Which will soothe your cares away,
Just start searching for a Reasonable Man

The universal feeling you'll discover
As you search is that thinking's just fine
Without reason, which is tedious,
Being forced upon a Reasonable Man

Why, in the name of heaven, should a man be
Forced to read, and what is more,
Be asked to understand the so-called
Masters and Great Minds who've gone before?

You'll be shunned and you'll be vilified,
Ridiculed and ostracized; your love of
Wisdom cynically mocked, if you venture to defend
The fact that Truth redeems a Reasonable Man.

— *Richard Morgan*

action confirms, if any confirmation is necessary, that Kline's defiance cannot go unchallenged. Yet, surprisingly, conservatives have not responded with the alacrity and acumen demonstrated by their liberal counterparts. Conservative commentators (other than this correspondent) have generally been silent. Pete Wilson and Dan Lungren have issued no public statements defending the CJP. While some Republican legislators (notably Ray Haynes, Charles Poochigian, and Rod Pacheco) have been outspokenly supportive of the CJP, others have jumped on the liberals' bandwagon. In a July 16 legislative debate, Assembly GOP leader Bill Leonard reportedly criticized the CJP for proceeding against Kline. Jan Goldsmith reportedly said the CJP's action "is an extremely dangerous, dangerous precedent." More seriously, on July 28, four Republicans joined Assembly Judiciary Committee Democrats in supporting a bill (S.B. 1623 by Senator Quentin Kopp, I-Daly City) that would have immunized Kline against disciplinary action. (Only Barbara Alby voted no; Rod Pacheco, an opponent of the bill, was absent.)

CPR's AFFILIATE publications, *Capitol Watch* and *California Court Watch,* highlighted the folly of this vote, which the *L.A. Times* trumpeted as evidence of Kline's overwhelming support. Following coverage in the conservative press, the resolve of certain GOP legislators stiffened. In contrast to the lopsided 11-1 Judiciary Committee vote, S.B. 1623 received a 12-6 favorable vote in Assembly Appropriations, with only one Republican aye vote. Moreover, under conservative pressure, some Republicans who had supported 1623 in Judiciary, such as Bill Morrow, later opposed it. In the face of a Pete Wilson veto threat and what Kopp called a "change of heart" among key Republicans, on August 26 the Kline provision was amended out of the bill by Kopp. During Assembly floor debate on the bill two days later, August 28, two Republicans, Jan Goldsmith and Tom McClintock, spoke for the Kline provision, perhaps erroneously believing it was still part of the bill. This is inexcusable. In a partisan effort to salvage Kline, on August 27 Martha Escutia amended her bill, A.B.

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the *Landgate* property rights decision ("Chief Justice or Chief Scofflaw?" by Mark S. Pulliam, *CPR,* July/August), which is the subject of good faith legal debate, it should be noted the governor appointed a large number of Coastal Commission members, whose actions or mistakes were in issue.

As to my father, Justice Stanley Mosk, being an "arch-liberal," I hope you recognize that from your viewpoint he does have some redeeming qualities: *Bakke* (declaring racial quotas invalid), *American Academy of Pediatrics* (dissent upholding the parental consent law), the 1985 Boys Club (*Isbister)* dissent("The incredible concept that a private, charitably funded recreational club for boys cannot be allowed to exist as such because it is a 'business establishment' would be an irresistible subject for ridicule and humor if it were not so serious in its impact"), the Boy Scout cases (*Curran* and *Randall),* the affirmance of many death penalty cases, etc. Moreover, Max Boot, the conservative *Wall Street Journal* writer, who is critical of various judicial rulings, mentioned that about the only judge who fares well in his recent book is Stanley Mosk. While one may not always agree with Stanley Mosk, his record does not suggest that he is driven by ideology.

Richard Mosk
Los Angeles

The Front Line

During all these discussions on judges, I trust you will not forget that 95 percent of us are down here on the front line resolving thousands of cases annually while trying to make sense of tens of thousands of federal and state laws and as many precedents.

Hon. Larry Stirling
San Diego

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1110, to include the Kline provision. Kopp's assessment was that "[t]he Democrats want to save Tony Kline. They can't do it." Perhaps Kopp is right, and I hope he is, but Kline and Escutia have some unlikely GOP allies in the campaign to rescue the state's most notorious scofflaw.

The issue is simple: Are judges obligated to follow the law? As Hamilton stated in *The Federalist* No. 78, "the power of the people is superior to both" the judiciary and the legislature. Moreover, "[t]o avoid an arbitrary discretion in the courts, it is indispensable that [judges] should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them." Kline's arrogant conduct flies in the face of Hamilton's wisdom. As Golden Gate University law professor Myron Moskovitz wrote in the *Los Angeles Daily Journal,* "[t]he mantra of judicial independence should not be used to cloak judicial lawlessness."

Conservatives must have the will to take back from activist judges the powers they have arrogated to themselves. It is time we all got off our knees and reasserted our sovereignty. We are not servants; judges are not our masters. Conservatives, wake up and take the right side on this fundamental issue. The CJP's desperately-needed action against Kline deserves GOP support. CPR

THE MIDNIGHT ECONOMIST

Zero Measures and Equality Policies

Be careful what you wish for ... look before you leap ... and other clichéd truisms we forget at our peril.

WILLIAM R. ALLEN

MARRIAGE COUNSELORS and others have warned us to be careful in determining what we want, for we might get it. It is safe, even if non-operational, to hope broadly and amorphously for "happiness" or "satisfaction," but there can be disaster in the details. Indicators and policies which initially seem appropriate and fair can camouflage booby traps. The traps can be found in various measures and procedures of "equality."

1. Consider employment. Everyone likes high employment, and rejoices over a low unemployment rate. If a small rate of unemployment is good, then a *zero* rate would seem best. But, in fact, zero unemployment is neither feasible in the method used in measuring it nor desirable by all criteria.

You may have had a job this morning and quit it to seek and accept another job this afternoon. But during the five minutes during which you left the one job and crossed the street to begin the new job, you were officially unemployed. Or you may spend weeks investigating job opportunities; such a costly search for market information can be a rational investment, but the Bureau of Labor Statistics counts you among the unemployed. We can avoid such transitory unemployment only by prohibiting employees from leaving jobs, prohibiting employers from terminating jobs, or requiring the unemployed to take the first available job, regardless of its nature and the terms.

2. Another seductive *zero* measure is found in the balance of international payments. Actually, since each individual transaction is balanced in the double-entry accounting record, *total* "credits" necessarily equal *total* "debits." But in looking at certain *sub-categories* — most obviously, trade of goods and services — we almost always have imbalance. While, as every mercantilist knows, it is nice to have an export surplus of merchandise and bad to have an import deficit, a zero balance might be deemed an "equilibrium."

This is not sophisticated analysis — and thus politicians and editorial writers clutch it to their bosoms. A

In UCLA's Economics Department, William R. Allen warns of spurious measures and distinguishes equity from equality.

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perfectly balanced trade in commodities, either bilaterally country-by-country or overall vis-à-vis the rest of the world, is not to be anticipated. Obviously, it would be an astonishing coincidence to have balanced trade with every other country. And if total imports from the rest of the world is greater than our total exports, that means (a) foreigners are contributing more output to our standard of living than we are supplying to theirs, and (b) we have a net inflow of foreign capital — we get, on balance, both their goods and their capital.

3. Still another balance of dubious value is in the federal government *budget.* Balance has returned after being AWOL for nearly 30 years, but the common hysteria over the deficit was largely unwarranted — and thus the re-establishment of balance is only a limited victory.

Few commentators on the budget tell us that the *size* of the budget is vastly more important than its *imbalance*. And, in extolling the balancing, they tell us nothing of the *nature* of taxes or the *direction* of spending — or of government-imposed *mandates* which do not show up in the budget. Nor do they point out that those past deficits were *not* associated with higher interest rates and inflation rates. And they certainly do not explain that, in a real and significant sense, the budget is *always* balanced: government spending represents absorption of the community's wealth, sequestration of national income, so government spending is taxation.

4. Wartime is propitious for *"equality."* One common way to rally the boys 'round the flag is to share equally key commodities which supposedly are in short supply. The pie is divided by issuing ration coupons: each person is assured the same amount of rutabagas. This seems manifestly fair: nothing else is quite as equal as equality. It is also a highly inefficient (read: wasteful) means of rationing — and since most goods are scarce, they must be rationed somehow.

In an open market, people are free to spend their limited income as they please, buying those things which are relatively most attractive to them. Preferences differ, and I should like to give you my *pro rata* share of rutabagas for your allotment of persimmons, and that pleases you. The total quantities of rutabagas and of persimmons would not thereby be affected, but each of us would gain by a distribution of the goods in accordance with our relative preferences. (We are not permitted by Big Brother to swap coupons.) "Share alike" is a lousy way to run an economy when people are blessed with different tastes.

5. One technique of "balance," "fairness," and "evenhandedness" beloved by college kids is "grading on the curve." With a symmetrical bell-shaped curve of grade distribution, there will be the same proportion of As and Fs, a larger proportion of Bs and Ds, with Cs being the greatest share. Ah, but for every soothing ointment, there is an intruding fly.

THERE IS the question of how large the individual grade categories should be. Should As and Fs each make up 10 or 15 or 18 percent of the grades? While young scholars profess to believe I should be obliged to award at least 18 percent As, they demur over the 18 percent Fs. But there is the prior question of where it is writ in stone that I must give X-percent As (and Fs), no more, no less. If everyone in the class does absolutely first-rate work, then everyone should receive an A; if no one does first-rate work, no one should receive an A. Except by coincidence of class performance never witnessed by me, an "even" distribution of grades would be a travesty.

6. Vague notions of fairness permeate the question of who should be admitted into state universities. The romantically naive of the community suppose that academic admissions go to those who are most competent, most accomplished, and presumably most promising. In the political real world, there are criteria of race and nationality and economic status.

It is now proposed that the University of California admit the top four percent of *each* high school, ranking to be determined by grade averages in college prep courses. However, not all high schools are equal: a student in the top four percent at Rural High or Inner City High is not as well equipped for college as the top four percent at Beverly Hills High. It is a source of embarrassment and frustration that high schools show great variance in the quality of their graduates. But the resulting problems and complications are not adequately resolved by merely accepting inequality of qualifications and by permitting mismatches of colleges and their clients, admitting students who are characteristically doomed to failure and resulting alienation.

We all seek with clear minds measures of "balance" and "zero" magnitudes of seemingly undesirable variables, and we pure-heartedly support "level playing fields" and "equal treatment." But in a complex world of numerous criteria and standards and perspectives, there can be many a slip between disembodied ideal and concrete reality. CPR

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Those Dubious 'Down Ballot' Polls

To think any sizable number of Californians have an actual preference much before Election Day among candidates they couldn't pick out of a police roundup is silly.

TIM W. FERGUSON

AS VARIOUS papers print opinion-poll numbers this fall, the most dubious are likely to be those for the "down ballot" races: lieutenant governor, secretary of state, attorney general, controller, treasurer, insurance commissioner, and school superintendent. To think that any sizable number of California voters, oblivious as they are to the daily functioning of Sacramento, have an actual preference much before Election Day among candidates they couldn't pick out of a police roundup is silly.

But the more interesting question is: how do six million people actually come to a decision in these races? The campaign noise levels are so high by the time most of these hopefuls get their commercials on the air that it's hard to imagine even a hit ad leaving much of a mark. (And when was the last time you heard anyone besides a political operative mention in conversation, "I'm going to go for Schmoe in the secretary of state's race"?)

Yet even the silliest of these posts have some significant duties, such as sitting on the UC board of regents, or the board of equalization, or even the debt advisory commission. The narrow 1994 defeat of Tom McClintock for controller was probably the worst political news of that year — and evidence that ticket splitting goes on among the constitutional offices. So what makes the difference? You'd think that after a primary in which, for example, Michael Capizzi stunningly bombed out in his race for AG, someone would want to find out why.

Apparently no exit polling has sought to find out. A *Los Angeles Times* poll staffer says it has never asked. The Field Poll didn't return *CPR's* call. McClintock, who had some witty ads that year but not enough money to get them up in major markets, thinks voters do absorb material in the days before a vote, starting with the ballot designations and qualification statements. There they must look amid the buzzwords for cues as to real differences in beliefs. The major press usually weigh in with summary articles, too often just made up of quickie bios and talking points from the candidates. TV and radio, of course, can be expected to offer nothing.

This may be why the vote for third parties is typically higher in the down-ballot races. When in doubt, vote Libertarian (or Green, or whatever) to know what you're choosing. Let's see whether the newspapers will surprise us with some genuine analytical coverage that spotlights issues, ambitions, and interests at stake in the lesser posts this time. Maybe post it on their web sites?

* * *

Speaking of McClintock, he got a respectful *L.A. Times* article atop A3 on a Sunday as he led the fight for a car tax repeal. That kind of attention might have helped in 1994, when, thanks to a letdown by business donors, he couldn't stay competitive in crucial Los Angeles County. Kathleen Connell — "businesswoman and New Democrat" — got a free ride from the press four years ago when she beat him. Wonder whether her history as a terror on wheels to her staff and others over her first term will draw notice as she seeks re-election with another huge warchest?

* * *

Another disadvantage McClintock had in 1994 was that even the GOP-oriented prison guards union wouldn't back him because it knew he was serious (and consistent) about curbing the state payroll. But as the exposures of brutality and coverup at Corcoran State Prison and elsewhere emerge in papers like the *Times*, and threaten to tarnish Dan Lungren's candidacy, the pact that many Republicans made with that devilish donor is not looking so smart.

* * *

Lungren ought to hope Mario Obledo keeps making news. The health and welfare secretary during the Jerry Brown/Gray Davis administration dropped all pretenses of open democracy when he forced the removal of

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an anti-illegal immigration billboard near Blythe with threats of vandalism to it and adjoining advertisements. Most press coverage didn't sugarcoat his censorial aims. Liberal op-ed columnist Peter King, based at the *Bee* papers, did rally to Obledo's side with a sympathetic portrait of a hurting old man's moral indignation.

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Remember in Orwell's novel *1984* how Eurasia and Eastasia would be Oceania's hated enemies one day and friends the next? The Sacramento budget negotiations have a similar memory-hole element to them, with wholly unacceptable spending levels suddenly becoming a marvelous triumph for taxpayers once a pact is reached. The capital press corps is too easily manipulated in this game — and the spin of its stories largely missed that Gov. Wilson and the GOP (yes, you, Ross Johnson and Bill Leonard) gave away 75 percent of the fiscal battle in order to cut short the standoff this summer. Score another one for the crafty pols on the left.

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When the Ronald George Court struck again with its ruling opening the door to suits by employees who claim they lost their jobs because of "workplace injuries," *San Francisco Chronicle* legal-affairs writer Harriet Chiang was ahead of the pack in noting two important elements of this latest state Supreme Court activism. The first is that disability nowadays refers in many cases not to a plaintiff's obvious physical incapacitation, but to "emotional stress." Thus a staffer who says a hectic office drove her batty can insist that another post, free of pressure, be reserved for her when she's got her head together. Also, as Chiang (and Bob Egelko of *AP)* noted, the worst part of the decision, allowing wrongful discharge actions with big potential damages, was made over the dissents of Janice Brown and Marvin Baxter. The opinion was written by Ming Chin, whom conservatives and libertarians want to remove from the Court in November.

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But the *Chronicle* on the same day was showing its wild side. Laura Hamburg's account of how UC's new fuzzy enrollment guidelines allowed Boalt Hall to boost its black and Latino count was not so much a news story as a chat session between admittees of the two affected groups. They went on about how they saw it as their racial and ethnic duty to liberate the Berkeley law school from its post-quota exclusionary mindset.

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San Francisco's papers were thrown into crisis when the conservative groups publishing "you can stop being homosexual" ads around the country came calling. The *Chronicle,* a beacon of free thought, refused to run the ad. The *Examiner,* which is either more open-minded or more desperate for cash, did publish, although of course with an editorial decrying the intolerance exhibited by the advertisers. This wasn't enough for the city's professional gays. Supervisor Leslie Katz hammered the paper and likened the sentiments to Nazism. But the only stormtroopers in town, it seems, wear pink.

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The *LA Times* was good enough to note the latest (state) appellate court dictum (in August) barring elected officials from carrying out the public mandate to cut off welfare to immigrants. But it failed to note who the three judges were. One of them: the ultimate Jerry Judge, J. Anthony Kline, once the legal secretary to Governor Brown junior. Governor Wilson can only blame himself for the two other justices, however, he named or elevated them to their posts.

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The "Washington Insight" column in the *Times* continues to be a periodic playground for the politically correct. One item this summer noted children of Reps. Jane Harman and Ellen Tauscher having a tiff on the tennis court at Sidwell Friends' day camp. How cute. Sidwell is, of course, the private school to which Washington liberals send their children to escape the horrid D.C. public schools. These same liberals will not allow the poor any vouchered alternatives for their own kids.

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Knight-Ridder Newspapers continues to reach further into California. The company headquarters has moved out near the chain's *San Jose Mercury News,* a moderately liberal organ. Meantime, Knight has added to its East Bay bastion (what had been Dean Lesher's Contra Costa Newspapers) with some weeklies including the *Berkeley Voice.* As the nation's second largest chain expands here, the more conservative Copley papers retreat to the flagship *San Diego Union-Tribune.*

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Again it fell to the *New Times* weekly to provide scrutiny of inner-city pols in Los Angeles. An editorial campaign exposed Assemblyman Kevin Murray's longtime residence in West Hollywood even as he purported to represent South Central. Murray just won a tight race for the Democrat nomination for a safe Senate seat, so the fact that no prosecutor seems interested in his bogus address means the *New Times* will remain only a nuisance for him. Perhaps if the *LA Times* paid attention the story would carry more weight.

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Dan Lungren's Run for Governor

More than just a game of Reps and Dems: Republicans still dream of Ronald Reagan as of some mythical magic from the ancient past, always sought after, never found, promising a golden Republican Renaissance. If only someone could remember the recipe.

by John Kurzweil

National Review has published its Happy Face report on Attorney General Dan Lungren's gubernatorial candidacy, calling Lungren the "Great Right Hope," "Golden Boy," a candidate who "serves his conservatism sunny-side up," and, the clincher, a man "already ... frequently compared to Ronald Reagan." Anyone expecting Dan Lungren, whether he wins or loses in November, to reproduce anything like Ronald Reagan's revolutionary upheavals in either state or national politics will be disappointed. Of course, few careful observers, one suspects, really do expect any such thing. What really propels Lungren's candidacy among California conservatives and among Republicans in general is fear, as *National Review* duly notes, though without calling it that: "The contest has been called the 'most important congressional race of 1998' because the governor will preside over California's redistricting following the 2000 census, with six or eight congressional seats in the balance," not to mention potential control of the House of Representatives and, for the next 10 years, the California Legislature. (And actually, the urgency is greater than *NR* portrays because a Democrat-controlled Legislature and executive would not

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have to wait until 2000. They could choose to re-district, that is, gerrymander, the state next year.) *NR* closes by commenting that "It's worth a great deal of conservative effort to see that" Lungren wins, a point easy to agree with, but not because Dan Lungren is the new Reagan. He isn't.

The *Wall Street Journal* last May questioned whether Lungren is a "worthy successor to Reagan," given his joining the lawsuits against Microsoft and the tobacco companies, opposition to Ron Unz's Proposition 227, his "doing little to mobilize the Republican base" to support Proposition 226 (requiring members' permission before unions could use their dues for politics), and his history of late endorsements for key conservative initiatives: waiting until a week before the election to support school vouchers, Proposition 174; waiting until *one day* before the vote to support Proposition 187. The Attorney General's Communications Director Rob Stutzman responded to the *Journal* that its criticism "paints in vivid colors the old cliché, 'with friends like you, who needs enemies?'" and that it "mixed distortions with apparent East Coast naiveté about what really is happening in California." Stutzman emphasized Lungren's "historic leadership on immigration reform, habeas corpus reform, and advancing zero-tolerance criminal sentences," then argued that the A.G.'s Microsoft and other recent legal proceedings were required of him by law. So the union of Lungren with anti-tobacco/anti-Microsoft is a shotgun wedding. But if that is so, it seems the groom, even speaking through Stutzman's letter, protests too little, at least for a "worthy successor of Ronald Reagan."

MANY QUALITIES made Ronald Reagan unique, but what made his public life an historical watershed was his clear understanding of, and his willingness to choose his side in, the furious clash of political, social, intellectual, moral, and religious forces that roils the world down to levels much deeper than such relatively transitory concerns as even gerrymandering ever go. It is easy to forget about, and therefore essential to recall to mind, this real combat, of which so much that seems so important is but its surface manifestation. It is especially essential in a campaign, like the current governor's race, driven more than anything else by an emotion — in this case, fear: GOP fear, more than enthusiasm for Lungren himself, of what a Democrat victory could mean; Democrat fear, more than enthusiasm for Gray Davis himself, of what a Republican victory could mean.

This real combat, defining our politics and demanding that we choose our side, is over the great collectivizing movement of the modern age, alternatively called, depending on which aspect it shows to the world, socialism or leftism or communism or liberalism. It has many other names. By any of them, it is the impulse to displace the West's traditional Judaeo-Christian faith in God with faith in man, an impulse borne of the desperation of atheism. Whittaker Chambers described it as "the vision of man's mind displacing God as the creative intelligence of the world .... Copernicus and his successors displaced man as the central fact of the universe by proving that the earth was not the central star of the universe. Communism restores man to his sovereignty by the simple method of denying God." The vision "challenges man to prove by his acts that he is the masterwork of the Creation — by making thought and act one. It challenges him to prove it by using the force of his rational mind to end the bloody meaningless of man's history — by giving it a purpose and a plan."

Does it all sound too melodramatic and overwrought to be true or relevant? It has, at times, sounded so to me. But I did not live through the Russian Revolution, Stalin's purges, or World War II, and so have not seen firsthand the terrible things men do driven by such a vision. Lady Astor once asked Joseph Stalin, "How long are you going to keep on killing people?" He answered, "As long as it is necessary. How many people were killed in the First World War? You killed that many people for nothing and you blame us for killing a handful for the most promising social experiment in history?" Stalin was not just a raving lunatic; he was, for millions of

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people throughout Europe and America, the embodiment of human progress. He stood at the top of the great "social experiment" that they firmly believed would end "the bloody meaninglessness of man's history." They also believed that God is a myth and that humanity is on its own: that no one or thing will save us, make sense of our lives, see to our physical, social, emotional, and other requirements, or provide us a reason to live unless we do it ourselves. The faith in Stalin, with great difficulty, eventually died, but not the deeper faith in materialist atheism and in the "social experiment" it spawned.

The question, from materialism, is practical. Whom shall we serve: an imaginary God in pursuit of a make-believe Paradise beyond this world or real, live men here, in the world we can see and touch and that is our home? Assuming God's non-existence, the question answers itself. And so men set about serving man, "displacing God as the creative intelligence of the world," although usually shrinking from admitting, even to themselves, that that is what they are doing. This practical logic confronts, and rejects, more than the ultimate object — God — of the West's traditional faith. It also disposes, as equally illusory, of "bourgeois morality." We see all around us its effect in undermining, so as to do away with, the building blocks of our freedom: rule of law; freedom of speech, of religion, of association; private property; equality before the bar of justice and the presumption of innocence; and more. All of that derives from what materialism labels a false religious heritage: the Ten Commandments, the Christian proposition that God is in every man, the conviction that we are endowed by our Creator with unalienable rights and thus that rulers rule only by God's leave and rule *well* only so long as they please Him.

I cannot say of Lungren what anyone can of Reagan: that from the start, everyone knew he was the outsider, the honest champion of the conservative cause.

The power of this vision can be seen in its inexorable "progress" through our land, institutions, and lives: prayer and all reference to the competing faith in God, alone among ideas or visions, is banished from the "public square," even though Americans are among the most religious of peoples; "tax freedom day" recedes, year by year, ever further into the spring and now into summer, even against monumental and ever-growing evidence of socialism's folly and the plain justice and practical economic wisdom of free enterprise; judges grow more obtuse, arrogant, and lawless even though Rose Bird is denounced, banished, and discredited (George Deukmejian becomes Ron George's campaign co-chairman, like a Ronald Reagan suddenly telling Gorbachev: "build back that wall"); and Democrats, who consider themselves the moral avatars of the nation, permit Bill Clinton to drag them into *defending* moral failings, social depravities, and violations of law perpetrated by a sitting president down to a level that would have been inconceivable only a few years ago. What accounts for this amazing power to overwhelm reason, experience, tradition, family, religion, and all moral sensibility?

The *Wall Street Journal* once quoted Representative Ron Paul as saying that people in the national Capitol will listen to any reason whatever to oppose legislation with only two exceptions: that a bill is either immoral or unconstitutional. How do we arrive at a point at which those are the only considerations *not* worth talking about? We arrive there — lots of us, not just crazy "fanatics" — by proclaiming God dead, leaving ourselves alone and responsible for everything. I recommend, in passing, Leonard Read's brilliant 1958 essay "I, Pencil," especially for its clear exposition of how absolutely the creation and maintenance of a free enterprise system depend upon faith, not in men, but in God.

Now one man among us, Ronald Reagan, suc-

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ceeded in opposing, even rolling back this otherwise inexorable tide of stupidity and destruction. How? In his "infamous" 1983 "Evil Empire" speech, he said: "I think I understand how Abraham Lincoln felt when he said, 'I have been driven many times to my knees by the overwhelming conviction that I had nowhere else to go.'" As a man of such faith, Reagan was a true revolutionary. He entered politics because he wanted to resist the collectivizing forces besieging America. Throughout his career, he subordinated all competing considerations to that goal, which automatically made him a pariah not only to Democrats, but to Republican liberals and "pragmatic moderates" like Pete Wilson. They uniformly reacted to Reagan the way nineteenth century British Prime Minister William Gladstone reacted to another man of faith, "Chinese Gordon," as portrayed in the movie *Khartoum*. During a scene in which Gladstone's aides urge him to employ Gordon on a critical mission, the prime minister retorts: "I trust no man who consults God before consulting me."

Just so. Practical men, Republicans from William Penn Patrick to Pete Wilson, Howard Baker, and George Bush consistently ridiculed, underestimated, fought, and feared Ronald Reagan because he wouldn't play the game, sacrificing the cause when out of sight of the crowd and expediency beckoned. As Cardinal Wolsey says of Thomas More in *A Man for All Seasons*, "You're a constant regret to me, Thomas. If you could just see facts flat on, without that horrible moral squint; with just a little common sense, you could have been a statesman." Read my lips.

Dan Lungren is generally considered to be on the conservative, Reagan side of this distinction. But I cannot say of Lungren what anyone can of Reagan: that from the start, everyone knew he was the outsider, the honest champion of the conservative cause, the cause we knew was *his* to his bones. Reagan was at Barry Goldwater's side when the whole establishment world, including all "respectable" Republicans, were denouncing the man. Reagan valiantly fought the Party's "Rockefeller wing" and championed GOP "outcasts" at meetings of the California Republican Assembly and, later, the National Conservative Political Action Conference. He promoted Young Americans for Freedom and, of course, *National Review*. He campaigned against Gerald Ford's choice of Nelson R. for vice president, his snubbing of Aleksandr Solzhenitsyn, and his Panama Canal giveaway. (Opposing Ford, by the way, lost Reagan the support of Leonard Firestone who, for a time, had been a member of the "Kitchen Cabinet." Ford was able to return the favor this year by helping Democrat Lois Capps defeat conservative Republican Tom Bordonaro in a California congressional race after Bordonaro defeated Leonard Firestone's son Brooks for the GOP nomination.) Reagan called the Soviet Union the "Evil Empire," put cruise missiles in Europe, made possible the pro-freedom resistances in Nicaragua and Afghanistan that drove communism from those countries, and told Gorbachev to "tear down this wall." Each time, he was ridiculed for "simplistic" thinking and roundly denounced in every "respectable" quarter, which was always a compelling additional reason, were any needed, to know he was doing right.

Can we talk this way about Dan Lungren? On the contrary, *National Review* reports that "Lungren now tells audiences that both the NRA and Handgun Control oppose his position on guns, which he takes as evidence that he has reached a sensible middle ground." This is an interesting way for the new Reagan to talk. I suppose, then, that if I locate a position with which both the ACLU and the Heritage Foundation disagree, it may safely be inferred that I am right, not from anything sensible in my position itself, but strictly from its position relative to those of my adversaries. I doubt this blithering logic was meant to impress Brother Joseph, Dan's high school debate coach whom, *NR* relates, "sat proudly in the San Diego audience for his star pupil's first face-off with Gray Davis." No, this *genuinely* simplistic reasoning was aimed straight at the establishment media, which loves such drivel precisely because

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it extinguishes thought while delivering a sneer at the "right wing." Soliciting acceptance from liberal reporters by equating the NRA with Hanfgun Control is no way to remind anyone of Reagan.

Strangely, given Lungren's general slowness to embrace, much less champion, conservative policy initiatives, the GOP candidate has taken to emphasizing his willingness to make the tough decisions "when the pressure is on." A recent Lungren for Governor press release quotes the candidate saying "That's the way I've lived my public life: I've made the tough calls and I've taken the heat." I would say: not on gun control, but there he has a genuine disagreement with the usual conservative position. How about an area where no such difference exists?

"Lungren's speeches on public safety invariably include broadsides against judicial activism ...," *National Review* reported. Now it so happens that the most outrageous judicial activist on the scene is a man Lungren has had direct experience of, California Chief Justice Ronald M. George. George is a media darling precisely because he is anti-family, anti-property rights, pro-tort litigation explosion, and a careful protector of such Rose Bird policies as forcing California taxpayers to pay for abortion and forcing Boys Clubs to accept girls. Above all, George is an enemy of the rule of law. Give George a direct order from the Legislature or the U.S. Supreme Court, he treats it like a birthday greeting. He's endorsed by Gray Davis. Dianne Feinstein is co-chairman of his campaign. He personally contrived the unconstitutional overthrow of California's parental consent for minors' abortion law, a law Lungren fought to preserve through years of litigation. George employed the exquisitely dismissive tactic of exploiting a change in Court membership to impose his will on the state, so that 15-year-olds can kill their babies without parental interference.

But, but, it turns out George is a Republican, a member of the Club, whom it would be inconvenient to offend. While his opponent has forthrightly acknowledged George as one of the left's own by endorsing him, the man who says "character is about standing up for what you believe in when the pressure is on" not only does not oppose, but cannot be heard even to criticize Ron George by name. Will I vote for Lungren? Yes. Is he a "Worthy Successor to Ronald Reagan"? Not if the measure is standing unmistakeably against the vision that would destroy our freedom.

BEFORE THE primary, when I informed a California Republican Party officer that Lungren had that day announced his opposition to Ron Unz' anti-bilingual education initiative, the reaction was a surprised: "No! Well, I guess he wants to get elected." The larger question of this year's politics thus appears to be: should we subordinate our principles to the expediencies of taking and holding power? This question goes far beyond Dan Lungren; the unedifying fear, for instance, of identifying Ron George as what he is extends through most of the Republican establishment from Pete Wilson through George Deukmejian to state Party Chairman Mike Schroeder, GOP "strategist" Ken Khachigian, and even Ed Meese. (I can't say about Bruce Herschensohn; he won't respond to my inquiries on the subject. A notable exception, by the way, exists in the state Legislature, where more than a score of Republicans have signed a letter opposing George's retention).

This isn't a matter of tactfully choosing our strongest arguments to make the conservative case; rather it is the stealth tactic of hiding our true objectives. "Just shut-up you gays, you feminists, you socialists," the Democrat left used to counsel its own, "after the election, you'll get more by being quiet now." It was the chant of a movement knowingly and profoundly out of step with America (though not with the nation's power elites), in contrast to Reagan's clear message of unity with ordinary people (and, inescapably, of disunity with the elites).

Analyzing opposition by two-thirds of California union members to the June primary's Proposition 226, which the GOP strongly supported, Reason Foundation Research Fellow Joel

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Kotkin wrote (in "The Reagan Democrats Return," The *Wall Street Journal*, June 9): "Whereas Ronald Reagan, a former union executive with working-class origins, thrived on the votes of moderate-income people, barely one-third of these voters, and less than a quarter of union members, backed Republican Attorney General Dan Lungren for governor. Conservative pollster Arnie Steinberg traces this disaffection to the widespread perception that Republican support for Proposition 226 was motivated not by concern for union members' rights, but by narrow political calculations aimed at crippling their opponents in the trade union movement.

"'What Reagan had was a disarming way to open communication,' notes Mr. Steinberg .... 'now there's too much of a political hard edge and not enough principle.'"

THE PRIMARY argument, usually made implicitly, albeit clearly enough, is, in effect, that power is the name of the game, not teaching the people, not shaping the public debate, not clearly identifying one's own vision for the good of the state. Those are all potential means to the political end of getting elected and, as such, should be used or discarded strictly according to whether or not they advance us toward our goal. Of course, after we're elected, we'll re-reverse matters, using the office as the *means* to serve the common good, our proper *end*. The trouble is, this game of switcheroo absolutely *dis*ables us from employing Reagan's "disarming way to open communication." This idea of "Reagan's disarming way," incidentally, has acquired the aura in GOP circles of some mythical magic from the ancient past, always sought after, never found, promising a golden Republican Renaissance if we could just find it again and put it to work, but nobody seems to remember the recipe. Actually, few want to endure the pillorying that standing with the people against the elite invariably brings.

Pete Wilson's variation on winning-is-what-matters is: You don't win by subtracting; to win, set up a "Big Tent" and don't drive people away (except prolifers and anyone saying anything not helpful to my presidential aspirations).

George Deukmejian, in *CPR's* July/August issue, following a lengthy, fanciful attempt to square the circle (that is, to convince people that the Chief Justice is a "strict constructionist"), finally got down to the point in a section he titled "The Big Gamble": "Let us not forget that the composition of the current Supreme Court, with the sole exception of Justice Stanley Mosk, reflects the appointments of two Republican Governors — myself and Pete Wilson. For anyone to agree ... that the Court is a liberal, activist one in the mode of Rose Bird is to elevate hysteria and obfuscation over deliberation and accuracy .... A wise maxim says that politics is the art of the possible .... As much as I earnestly hope for Attorney General Dan Lungren to ascend to the governorship, politics — as with anything in life — is uncertain, and we cannot know who would be in the governor's office to fill any newly-created vacancies. It would therefore be not only ironic for conservatives to attack a conservative Court, but downright irresponsible; to risk sacrificing a solidly conservative Court for the illusion of a perfectly conservative Court would amount to the sheerest form of folly."

I doubt George Deukmejian expects to persuade many people that Ron George is a strict constructionist. What I think persuades Deukmejian and many of those Republicans who either support the Chief Justice's retention or are unwilling to oppose it, at least publicly, is the matter of appearances. If this sounds trivial, I do not mean it to. Reputation is critical to individuals and groups, especially political parties. Deukmejian's point that this Court represents the judgments of two Republican governors and, thus, indirectly of millions of California Republicans, is by no means trivial: we cannot isolate Ron George; if something is seriously wrong with him, something also, at least to some extent, is wrong with us as Republicans. And of course, people being imperfect, there is always something wrong with everybody. So Deukmejian advises: Do not lightly open arguments about relatively small defects. They can undermine the delicate, often fragile unity of a political Party, bringing down the whole structure, a calamity far worse than enduring an occasional bad decision, even one so bad as *American Academy*.

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The first point to raise in response, while admitting the valid point here as far as it is valid, is that a balance must be struck. Neither unity nor winning elections — not even reputation — can be allowed to become ends in themselves. Referring again to that most instructive of political primers, *A Man For All Seasons*, the obvious answer was given by More: "When statesmen forsake their own private conscience for the sake of their public duties ... they lead their country by a short route to chaos." This film deals with More's refusal to endorse Henry VIII's claim that he is Supreme Head of the Church in England and, as such, free to decide whether or not his first marriage, which he seeks to dissolve, was lawful. At one point, an old friend of More's, the Duke of Norfolk, urges him to sign the act of submission to the king by saying "frankly I don't know whether the marriage was lawful or not. But damn it, Thomas, look at those names [already signed] ... You know those men! Can't you do what I did, and come with us, for fellowship?" To which More, moved, responds: "And when we stand before God, and you are sent to Paradise for doing according to your conscience, and I am damned for not doing according to mine, will you come with me, for fellowship?"

The primary, implicit argument is that power is the name of the game, not teaching the people, not shaping the public debate, not identifying one's vision.

This division between principle and pragmatism in human affairs may be compared to a division in human personalities, and just as a balance must be struck between the possible and the ideal, so balance is required between the natural predilections that distinguish what I will call, on one hand, the *pioneering* and, on the other, the *technical* spirits that move different men different ways. Walt Disney, for instance, was a pioneer. "I could never convince the financiers that Disneyland was feasible," Disney is quoted as saying in a book on the history of his world-famous park. "Early in 1954," the book relates, "key Disney staff members assigned to Disneyland development toured major amusement parks across America .... Recalls one: 'We could have paid for the entire trip with a few dollars from each person who told us, "If you don't put in a roller-coaster or a Ferris wheel, you'll go broke!"' .... A park *sans* barkers, baseball-throws and a tunnel of love? Top amusement-park owners couldn't believe it. 'All of that money just for theming and landscaping? Walt's got to be kidding. It'll never go!'"

Another example could be Steve Jobs, a founder of Apple Computer. Jobs' vision, like Disney's, succeeded at least partly precisely by ignoring all the rules, but, evidently untempered by sufficient doses of the spirit of the technician, Jobs seems to have driven the company to so over-heated a pitch that he was eventually forced out.

IN POLITICS, the pioneer, on the Republican side, clearly was Ronald Reagan. All the GOP's technicians *knew* he could go nowhere. My first conclusion is that what ails the Lungren campaign is what ails the Republican Party, especially in California: too many technicians and too few pioneers; too many George Deukmejians counseling against the "big gamble" and George Bushes belittling "the vision thing"; too few Reagans ignoring that counsel so as to remind us why, really, we are doing this. The ill-effects of this sort of imbalance appear in institutions as well as in individuals. Former Education Secretary Bill Bennett tells a story about a school he once visited somewhere in the Midwest that had a *100 percent* drop-out rate — and yet was still open every day, the administrators and counselors dutifully present in their offices each morning when the bells rang, the teachers in their empty classrooms,

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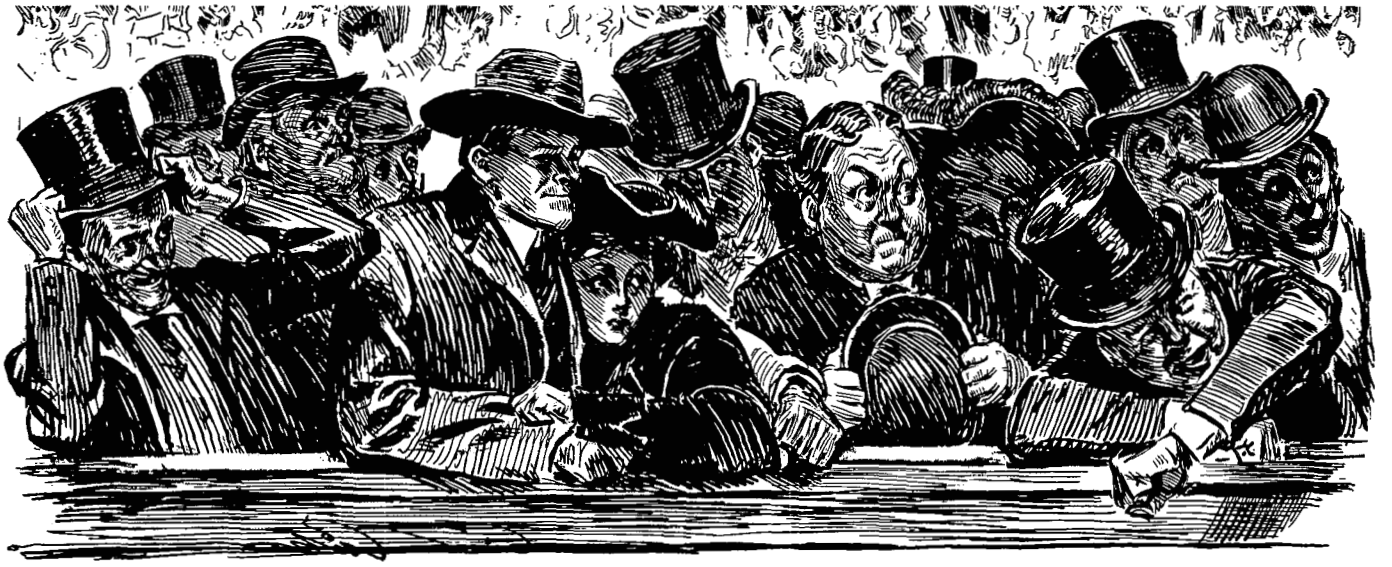

THE EDUCATION RACE

A LITTLE-KNOWN FIRST GRADE TEACHER SHAKES UP THE CALIFORNIA SCHOOLS ESTABLISHMENT

BY WAYNE BISHOP

A SURPRISING DEGREE of attention is being paid to a relatively little-known candidate, Republican Gloria Matta Tuchman, running for California Superintendent of Public Instruction. Tuchman opposes an incumbent, Delaine Eastin, who enjoys the full, enthusiastic backing of her Party, of the state's powerful teachers' union, and other public employee unions. Eastin's outlook and policies are a perfect fit with the education establishment's ideological, financial, and political interests, and so she has no worry about receiving ample funding for her re-election campaign. She can count on plenty of sympathetic, if not actually cheer-leading, coverage in the press.

Contrasting with this Democrat unity are Republican divisions, most noticeably over the issue that more than anything else has propelled Tuchman into

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prominence: Proposition 227, which bans most bilingual education in California public schools. While Tuchman, with Silicon Valley entrepreneur Ron Unz, co-chaired the campaign to pass 227, GOP gubernatorial standard-bearer Attorney General Dan Lungren actually opposed it, as did state Republican Chairman Mike Schroeder — both joining Lungren's Democrat opponent, Lt. Gov. Gray Davis, and Eastin herself in opposition to the highly popular initiative. Also in contrast to Eastin, whose incumbency provides her built-in political stature, experience, and a formidable base of support, Tuchman holds no elected office — never has held one.

EASTIN'S NERVOUS CAMP

AND YET an undercurrent of worry stalks the Eastin camp. On almost the last minute of the last day to request such changes, for instance, the incumbent attempted what seemed a desperate maneuver to add the word "teacher" to her November ballot designation. Eastin, facing an opponent who has taught elementary school for 33 years, wanted to drop "Superintendent of Public Instruction," her identification in the primary, in favor of: "Teacher/State Superintendent." A Sacramento judge threw out the new wording when he learned Eastin had not taught a class since 1979 and is qualified only as a community college instructor. The clumsy maneuver suggests all is not calm in the Eastin camp.

Another item: when the first state-wide elementary school test scores Californians have seen in decades gradually became public during the summer, showing dismal results in reading and math, Eastin — who had strongly opposed the testing — nervously averred that the numbers were "much better than the doomsayers predicted." But Governor Pete Wilson said "the kids are being cheated." And these results were limited to students considered fluent in English, leaving out the "limited English proficiency" group, which, in California, includes about one of every three students in the grades tested (2 through 11). The scores grew more distressing the higher the grade: the test found the reading skills of only 36 percent of 10th graders, for instance, achieved the "national norm." Political pundit Dan Walters wrote of the Superintendent's race that "school achievement is likely to be the chief campaign issue," and that, "if she can amass enough campaign money to deliver her message, Tuchman could be a formidable challenger."

Tuchman is stressing the contrast between her lifetime in the classroom with Eastin's career in politics while addressing the criticism that the schools have lost track of their basic teaching purpose. And it seems Tuchman, like the initiative she championed, has touched a nerve with the public, one whose importance may in the end outweigh Eastin's establishment advantages. After all, many parents have now grown accustomed to augmenting their children's education, to school-shopping within their local district, to employing private school or home school alternatives, or to moving to districts known for student performance and safety. Before the primary, one Democrat gubernatorial candidate acknowledged publicly that he would not consider sending his children to California public schools.

Tuchman, and a growing segment of the electorate, believe our educational problems stem from the schools' having adopted abysmally low expectations for both teachers and students, from having set the standard of success at the minimalist level of merely keeping students in school. Simple-minded as it may seem, the schools have long run under the assumption that if kids don't drop out entirely, they are being educated. This philosophy drives all sorts of educational idiocies: If a child speaks only Spanish, we would conduct school in his language in spite of evidence that life-long damage is being done. If he can't read, we would encourage him to guess from the pictures and to discuss how he feels instead of what the author says. Irregular attendance, ill-prepared homework, disrespect for fellow students, teachers, and school property, even coming to school with weapons, are all tolerated. Normally unacceptable behavior is considered less important than the overriding message: "Don't drop out."

TUCHMAN'S STRENGTH

THE OPPOSITION generated by this defeatist approach is Tuchman's strength in the Superintendent's race. That opposition appears in various forms. As mentioned above, there are par-

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ents' creative maneuvers to better their children's schooling and high-profile public statements lamenting the system's failures; also Wilson's remarkable victory, after a long battle with Eastin, the state Department of Education, and the rest of California's education industry, in establishing a valid and reliable statewide test (STAR).

NEW ACADEMIC STANDARDS

THE OPPOSITION has also gained ground in the area of grade-level standards. Credit here goes to the state Board of Education. California's new Math Standards, approved over Delaine Eastin's vocal objections, are rated by the Fordham Foundation as the best among the states. (In January, in a major address to the National Center for Education and the Economy [NCEE], Eastin called these standards "dumbed down." They are anything but. The approved draft was prepared by mathematics faculty at Stanford instead of the usual "experts": enthusiasts of the New Standards Project promoted by the NCEE.) These realistic grade-by-grade standards of competence include enough specificity to limit severely the evil of "social promotion." (The ultimate "don't drop out" message to students, social promotion means just sending all the kids along, no matter their competence, to keep them and their social group together.)

California's other academic standards also represent a victory for opponents of the educational establishment: the state's Reading Standards reject the elite-favored Whole Language approach to teaching reading, turning instead once more to deliberate, systematic teaching of reading skills, often subsumed under the name "phonics." The Science Standards escape the science education industry's infatuation with "inquiry-based" science, where, the rhetoric says, students learn "how science works" by hands-on activities allowing them to discover "underlying concepts." But science does not work that way. Oceanography does not spring revealed into the minds of bubbly teenagers on a field trip to the beach.

The next critical battle in this larger war over educational policy is the election of a new Superintendent. As an elected, non-partisan office-holder, the Superintendent enjoys the independence to de-emphasize, and sometimes to ignore entirely, policy formulated by the state Board of Education. Eastin's retention would clearly signal an establishment restoration. It would be a major setback for the opposition and the various reforms it has achieved, undermining even the implementation of Proposition 227.

A Tuchman victory would send the opposite signal. Although she is fully bilingual herself, every child in Tuchman's first grade class learns to speak, read, and write English. At her school, Taft Elementary in Santa Ana, the Limited English Proficient (LEP) second graders are well above national averages, at the 55th percentile in reading, and an amazing 79th in mathematics.

Tuchman has done more than teach first grade. She served on her local school board as member and as president. Her testimony before the Legislature on Bilingual Education succeeded in persuading two governors to veto four different bills she opposed. Former U.S. Education Secretary William Bennett named Tuchman a member of the federal Department of Education Advisory Council for Bilingual Education. She is a long-time active member of the Right to Read Foundation and, of course, she co-authored Proposition 227 with Ron Unz.

Tuchman also supports "opportunity scholarships," which would permit parents of children in poorly performing schools to receive substantial state assistance if they want to move those children to a private school. Several states are experimenting with this concept in various forms. Wilson has championed it and Lungren has endorsed it. The idea is not that private schools have sufficient capacity to absorb all potential demand, but that competition would force poorly-performing public schools to improve, a process that would be hastened now that STAR testing has made it far more difficult to hide low student performance.

STILL THE LARGEST PART

EASTIN'S POWER base in the Democrat Party, CTA, and other unions precludes her supporting pretty much any part of this reform agenda. Although "down ticket," and thus tending toward invisibility in many voters' minds, the Superintendent of Public Instruction race is nonetheless key for the future of education, still the largest part of each year's state budget and the issue most voters rate number one — or did, at least, until recently, when the president made "character" issue one. CPR

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California Judges' War On Private Property Rights*

By Gideon Kanner

I have been asked to comment on the state of California law insofar as it applies to constitutional rights of private property owners subjected to severe government regulations. Though the subject, particularly in its "Taking Issue"[1] manifestation, is quite complex, in terms of legal theory this much is clear: when land-use regulations go "too far," when they impact on the regulated property to such an extent that its owners are *de facto* stripped of virtually all utility and value, that is the

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* *This article was written in preparation for a recent California Public Policy Foundation-sponsored debate on the question: Resolved: "The California Supreme Court under Chief Justice Ron George has accurately and carefully and fairly applied the law." Dr. Kanner argued the negative.*

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functional equivalent of a taking of property, for which the Constitution requires payment of just compensation.

These cases are relatively rare, but they do occur. In the normal course of events one would expect California to have its share of them. After all, California is the most populous, the most highly regulated, and the most litigious state in the Union. Of the 18 regulatory land-use/taking cases considered by the U.S. Supreme Court on the merits since 1980, nine were from California. In other words, *California accounted for as many such U.S. Supreme Court cases as the rest of the country combined.* And yet, there have been no reported cases in which a California land owner has been awarded just compensation for a regulatory taking of property.

For the past 19 years the California Supreme Court has aggressively led the anti-property rights movement, taking the most extreme position among American courts. This judicial extremism started with *Agins v. City of Tiburon*, 24 Cal.3d 255 (1979). There — ignoring prior California law and prevailing U.S. Supreme Court law — the court held that a California land owner could not recover compensation for a regulatory taking, no matter how severe the loss, and all that such an owner was entitled to would be a judicial declaration that the regulation in question was invalid. The two conservatives then on the California Supreme Court split on this issue; the majority opinion was written by Justice Frank Richardson, and Justice William P. Clark, Jr., dissented.

Of course, in many cases invalidation of the confiscatory regulation is no remedy. To tell a landowner who after years of denial of use and of costly litigation is facing foreclosure and bankruptcy, that the government shouldn't have done what it did to him, is no remedy. Besides, it turned out that California courts weren't about to invalidate such regulations either. The California Supreme Court in effect issued a *carte blanche* to land-use regulators that disregarded the rights of the state's land owners. This is no hyperbole. By 1974, the abuse of landowner rights in California was already so well established that a California city attorney named James Longtin wrote an article in a municipal lawyers' publication, gloating over the lack of remedies available to California land owners, and exhorting his fellow city attorneys to frustrate them by continuously changing land-use regulations without fear of meaningful judicial intervention.[2] Longtin's mocking prose accurately captured the plight of California land owners:

> If legal preventive maintenance does not work, and you still receive a claim attacking the land use regulation, or if you try a case and lose, don't worry about it. All is not lost. One of the extra "goodies" contained in the recent [California] Supreme Court case of *Selby v. City of San Buenaventura*, 10 Cal.3d 110, appears to allow the City to change the regulation in question, even after trial and judgment, make it more reasonable, more restrictive or whatever, and everybody starts over again.
>
> See how easy it is to be a City Attorney?[3]

Then there were the at-times outrageous excesses of the California Coastal Commission that at one time led a charmed life in the California courts, winning nearly 90 percent of its reported appeals during the formative years

1. The term "taking issue" was coined around 1970 to describe the constitutional controversy that arises when government regulations so severely limit economically productive use of private property that they become its *de facto* takings without payment of the just compensation required by the Fifth Amendment to the U.S. Constitution and Article I, Section 19, of the California Constitution. Though this term is comparatively new, the constitutional doctrine that land-use regulations that go too far amount to a taking of the [over]regulated land was laid down by the U.S. Supreme Court in 1922 in the landmark case of *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (". . . while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." Id. at p. 415).

2. James Longtin, "Avoiding and Defending Constitutional Attacks on Land Use Regulations (Including Inverse Condemnation)" 38B NIMLO *Municipal Law Review* 192-193 (1975).

3. Not even the U.S. Supreme Court's leading liberal, Justice William Brennan, Jr., could stomach that. In his famous dissent in *San Diego Gas & Electric Co. v. City of San Diego*, 450 U.S. 621 (1981) he urged the court to hold in favor of recovery of damages as the remedy for regulatory takings, and used the Longtin quote as an illustration of why the California Supreme Court's *Agins* holding denying compensation for regulatory takings, was ineffective and legally erroneous. Seven years later, in *First English Evangelical etc. Church v. County of Los Angeles*, 482 U.S. 304 (1987) the majority of the U.S. Supreme Court agreed with Brennan and overruled the California no-compensation rule.

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of interpretation of the Coastal Act. Space limitations prevent going into that sorry chapter of California legal history. Suffice it to note the case that in a manner of speaking tells it all — it reveals the extremism of both the California regulators and of its judiciary as probably no other case does. In *Whaler's Village Club v. California Coastal Commission*, 173 Cal.App.3d 240 (1985) California courts upheld the commission's positively loony determination that owners of beachfront homes who erected emergency revetments to save their homes from destruction by unusually severe winter tides, were engaged in unpermitted "development," which subjected them to fines and required them to donate parts of their beachfront yards to the state.

How do we evaluate all that? A rather harsh answer comes from the considered opinions of national experts: California is the unanimous choice of informed legal commentators — irrespective of which side of the issue they come down on — who agree that California is the state least respectful of land owners' constitutional rights. Their conclusions speak for themselves.

Has the nominally conservative California Supreme Court tried to reverse the previous Court's unwavering endorsement of land-use regulatory extremism, or put a stop to its further unchecked growth? The answer is an unequivocal 'no.'

IN HIS book *Property Rights and the Constitution* (State Univ. of N.Y. Press 1993), Dennis Coyle reported the results of a survey he conducted among land-use experts of different substantive outlooks: "California was a near unanimous choice as the state least likely to protect landowner rights. California municipalities . . . are accustomed to meeting little resistance from the state courts." Norman Williams, the author of the major treatise *American Land Planning Law* (Clark Boardman Callaghan 1985) and a high-profile proponent of stringent land-use regulations stated in his book that California courts are rougher on land owners than courts of any other state, and routinely uphold regulations that would be found illegal in any other state. Another knowledgeable commentator, Gus Bauman, observed in his article "The Supreme Court, Inverse Condemnation, and the Fifth Amendment," 15 *Rutgers Law Journal* 15 (1983), at page 70, that "California is commonly regarded as the most restrictive state in the country with respect to land use." Bauman concludes that the California Supreme Court is a parochial institution, unwilling to learn from other jurisdictions even as it continues on its idiosyncratic way.[4] Professor David L. Callies has made caustic reference to the inability of California land owners to obtain any sort of judicial relief from undue hardships and lengthy procedural delays.[5]

Probably the most consistently scathing commentary on the California courts' performance in this field was delivered by Richard Babcock and Charles Siemon in their book *The Zoning Game Revisited* (Oelgeschlager, Gunn & Hain 1985). Several quotations from these authors' work speak for themselves:

- "[A]nyone who practices public law in California should know better than to expect the California courts to be sympathetic with procedural due process protests when they challenge governmental practices. The Fourteenth Amendment [to the U.S. Constitution] appears to be nonexistent." (page 251)
- "In California, the courts have elevated governmental arrogance to a fine art." (page 253)
- "What *can* one say about California courts other than that one has to be a madman to challenge government regulations in that bizarre jurisdiction?" (page 257, emphasis in the original)
- "California has always been notorious for being the first jurisdiction to sustain extreme municipal regulations. Practitioners in other states have joked about why a developer would sue a California community when it would cost a lot less and save much time if he simply slit his throat." (page 293)

Because of this criticism's acerbic tone, it is necessary to emphasize that it comes *not* from private property rights champions; most of these commentators are widely recognized as having a pro-government orientation that favors extensive land use regulations without compensation to the affected property owners. Yet they too have had to recognize that when it comes to land use, California law is at the forefront of ideological extremism.[6]

4. Id. at 94, n. 447

5. David L. Callies, "The Taking Issue Revisited," 37 *Land Use & Zoning Digest*, p. 6, at 7 (July 1985).

6. I offer as an example of the arrogance, if not outright lunacy, of California land-use officials the story reported by Stephen J.L. Page in the *Wall Street Journal* (Dec. 27, 1994, p. A16) of a northern California land owner who, upon applying

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Norman Williams spent his career as a government land-use regulator. He has throughout been outspoken in his views favoring high levels of land-use regulations, and opposing land owner rights, particularly their claims to compensation for regulatory takings of their property.[7] Richard Babcock, until his recent death the dean of the nation's land-use bar, was also a prime exponent of government regulation, and was a co-author of *The White River Junction Manifesto*, a strongly anti-property rights polemic. So was Charles Siemon. Gus Bauman has had a distinguished career in both public and private sectors; after serving as counsel to the National Association of Home Builders, he served as Chairman of the Maryland-National Capital Park and Planning Commission (the body in charge of land-use regulations in Montgomery County, Maryland). David L. Callies, now professor of law at the University of Hawaii, was a co-author of *The Taking Issue*, a 1973 book strongly advocating that the U.S. Supreme Court overrule the *Pennsylvania Coal Co. v. Mahon* case and deny compensation to owners of land subjected to confiscatory land-use regulations. The fact that these outspokenly pro-regulation scholars and commentators hold such critical views of California law, speaks for itself.

A California land owner must now pursue five or six separate administrative and judicial proceedings to receive the relief that the Constitution supposedly guarantees.

THIS THEN was the California regulatory regime established under the "Bird Court." But the "Bird era" came to an end in 1986. What has happened since then? Has the new, nominally conservative California Supreme Court either tried to reverse the previous Court's unwavering endorsement of land-use regulatory extremism, or at least put a stop to its further unchecked growth? The answer is an unequivocal "no" on both counts. If anything, the "George Court" has embraced an even more extreme anti-property posture. The "Bird Court," for all its radical excesses, could at least invoke the excuse that it was writing on a clean slate, that the U.S. Supreme Court had not yet explicitly forbidden the adoption of the anti-property rules the court was making up. No such excuses exist now. The U.S. Supreme Court has spoken, and has crisply held in 1987 that the California Supreme Court had decided the constitutional compensation question inconsistently with the requirements of the Fifth Amendment. But that holding has had no discernible effect in California.

Remarkably, following the U.S. Supreme Court's 1987 decisions in *First English Evangelical etc. Church*, 482 U.S. 304 (1987) and in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) — in which the U.S. Supreme Court unequivocally held that the California Supreme Court had misconstrued governing constitutional law and that its rules were more extreme than those of any other American jurisdiction — the California Supreme Court did nothing for over 10 years.[8] During that time the intermediate California appellate courts continued to turn away aggrieved land owners on the flimsiest of procedural grounds without correction or intervention by the state Supreme Court. What evolved in the California appellate courts in the 1980s with regard to takings cases, is reminiscent of the regime that governed death penalty cases in the "Bird Court" when seemingly no prosecutor could try a capital case correctly. This time around, when California courts got done with the pleas of constitutionally aggrieved land owners, it was always made to appear that the land owners sued too early, or too late, or in the wrong way. They just couldn't win.

Finally, in the 1990s, in a series of four cases,[9] the California Supreme Court, instead of rectifying the problem,

for permits to build his single family home, was told by a local land-use control functionary that "In my former life as a sea gull, I was flying up and down the California coastline and saw your house built shaped as a seashell, rather like a Nautilus seashell, built out of driftwood and feathers, with the aperture facing out to sea." In the end, Mr. Page, who was both the reporter and the land-owner, was permitted to build only a 1900 sq. ft home on 47,000 sq. ft. lot in which he had invested $1.4 million — a grotesque underimprovement on a lot of that size and value.

7. See, Norman Williams, *et al.*, "The White River Junction Manifesto," 9 *Vermont Law Review* 194 (1984).

8. Michael M. Berger, "Silence at the Court: The Curious Absence of Regulatory Takings Cases from California Supreme Court Jurisprudence," 26 *Loyola of L.A. L. Rev.* 1133 (1993).

9. *Ehrlich v. Culver City*, 12 Cal.4th 854 (1996); *Hensler v. City of Glendale*, 8 Cal.4th 1 (1994); *Landgate v. California Coastal Commission*, 17 Cal.4th 1006 (1998); and *Kavanau v. Santa Monica*, 16 Cal.4th 761 (1997).

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went farther than ever before. In one of those cases, *Ehrlich v. Culver City*, the Court held that the owner of a failing business may be required to pay money to the municipality in which the business is located before being permitted to put his land to other, productive uses. There is no basis in law for such a rule. The U.S. Supreme Court made clear that monetary exactions of this kind are only permitted when the owner creates a new project that causes a detriment to the community.

Procedurally, the California Supreme Court created a prolix legal regime that went out of its way to place procedural obstacles in the path of land owners complaining of violation of their constitutional rights. The Court was explicit in *Hensler v. City of Glendale*,[9] that it was structuring California procedural rules to be more burdensome than those required by federal constitutional law, in order to protect local government agencies from having to pay the just compensation required by the Constitution for confiscatory violations of land owners' rights. And so, Californians seeking relief for a regulatory taking, unlike anyone else, must now go through some half-dozen proceedings before they may appear in a court proceeding where it is even possible to seek recovery of just compensation for regulatory takings of their land. Worse, when confronted with cases of land owners who had managed to navigate this hostile procedural labyrinth in *Kavanau v. Santa Monica* and *Landgate v. California Coastal Commission*,[9] the California Supreme Court invented new reasons for denying relief and held that they would not receive relief anyway.

In today's legal regime, California land owners, who complain of constitutional violations by having been denied the right to put their land to reasonable uses, unlike any other species of litigant, must go through the following Dickensian nightmare. They must (a) apply for a land-use entitlement or permit, (b) upon its denial, they have to exhaust every administrative remedy and administrative appeal even if doing so would be an act of futility, then (c) they must then apply for a variance, then (d) file a petition for a writ of mandate in court, seeking to review the validity of the regulation, even if the regulation is concededly valid, and only then (e) they may pursue an action for inverse condemnation which, even if successful, consists of two separate trials: one before a judge on the question of liability and another in front of a jury on damages. Thus, a California land owner must now pursue five or six separate administrative and judicial proceedings to receive the relief that the Constitution supposedly guarantees.

This is an obviously contrived process that consumes years and hundreds of thousands of dollars in litigation expenses and is evidently intended to discourage California land owners from even seeking the constitutionally-promised just compensation when their property is taken by extreme government regulations. Its burdens have simply shut out small land owners from the judicial process. A few of them have had the good fortune to secure *pro bono* representation by the Pacific Legal Foundation, but most have just been put out of court — they *de facto* have no constitutional rights.

And so, to the extent I have been asked whether the California Supreme Court has accurately and carefully and fairly applied the law, I must answer in the negative. Whatever doubt existed on that score was dispelled by the Court's recent *Landgate* decision once again rejecting a perfectly proper regulatory taking claim of a land owner (who was wrongfully denied the right to build a home on his land). This in spite of vigorous and well-reasoned dissents by Justices Janice Brown and Ming Chin.

ONCE AGAIN, the Court made a mockery of paramount U.S. Supreme Court law. The U.S. Supreme Court has held as clearly as the English language allows that in pursuing regulatory takings claims, land owners are required only to carry through an application for a permit from the land-use administrative agency to its final determination, but are *not* required to pursue either administrative appeals or to sue in court for non-monetary remedies.[10] In *Hensler* the California Supreme Court ignored these rules and imposed just such unnecessary burdens on California land owners. In *Landgate*, the state Court went even further in disregarding the U.S. Supreme Court mandate and defiantly held that not only must a Californian do all these things that the Con-

10. *Williamson County Regional Planning Com'n. v. Hamilton Bank*, 473 U.S. 172, 193 (1985).

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stitution does not require, but adding insult to injury also asserted that being forced to litigate a government agency's unconstitutional denial of a permit, is now to be considered a "normal" part of a Californian's effort to build a home and hence not a basis for recovery of compensation.

THERE IS more to this problem that is not visible to lay Californians, and indeed to most lawyers. The current developments in the pertinent law are also a source of concern because of the alarming growth in numbers and in the influence of Supreme Court staff (the Justices' research attorneys).[11] The Court's output of some 80 to 100 opinions in a typical year (or roughly two per calendar week), plus its decertification of a like number of Court of Appeal opinions, suggests a judicial workload that the Justices cannot possibly bear alone. As Professor Stephen Barnett pointed out in his 1996 article "The Bureaucourt," in the *California Lawyer*, the justices have to rely to an unhealthy extent on the efforts of their research attorneys who actually draft the court opinions (or major parts of them) and thus are responsible for the shaping of the specific language of those opinions that eventually are relied on by lower courts in deciding future cases. In cases which interpret and apply well-settled law, the clerks have some discretion but are fairly well circumscribed by the existing law. But in those precedent-making cases where the court ventures into uncharted territory, the specific phrasing used in the Supreme Court opinion may be critical in future cases. But that language is often crafted not by the judges but by their research attorneys who are not accountable, and are largely unknown to civic and political institutions.[12]

Finally, ideas have consequences, and not surprisingly, the impact of this judicial attitude of hostility toward private property rights has been felt in California not just in the law, but also elsewhere. As made clear by Longtin's gloating of two decades ago, the California Supreme Court's views don't go without notice by the municipal regulators. They are widely taken in city halls across the state to mean that the California judiciary will not curb regulatory excesses in property regulation. The upshot has been a breakdown of the checks and balances system. Land-use law on the books is meaningless because it can change unpredictably according to local NIMBY[13] whims.[14] The only check operating on municipal land-use regulators is the toothless threat of defeat at the polls, so that the "law of the land" in such matters is the majoritarian whim, not the Constitution.

Individual property owners have no effective recourse to the democratic process. The owner of one parcel of land, who faces scores or even hundreds of neighbors demanding that the parcel in question not be developed or that it only be underdeveloped in some economically irrational way, so they can continue enjoying the *status quo* of its undeveloped or underdeveloped status at that parcel owner's expense, has no democratic recourse — it's a case of one vote against scores or hundreds. Those are precisely the kinds of cases where the courts need to be sensitive to constitutional values. But California courts are not; they don't seem to care.

Municipal officials and zoning functionaries have largely enlisted themselves on the side of the NIMBY movement. Thus, many of the land-use planning decisions that infringe on private property rights of land owners are motivated not by environmental concerns or good planning, but rather by base pandering to suburban constituencies that have been enriched by this process as the values of their homes rise because of the artificial constriction of housing supplies that flows from the local regulators' pandering to the NIMBY crowd. Though the recent recession attenuated this process for a while, now that a recovery is underway we are back to a seller's housing market and skyrocketing home prices. Two presidential commissions have studied the problem of excessive housing cost, and both have concluded that excessive regulations are implicated in excessive housing costs.

Dartmouth Professor William Fischel, a highly respected land economist, has demonstrated in his recent book (*Regulatory Takings: Law, Economics and Politics*, Har-

11. The California Supreme Court employs five staff attorneys per Justice. No other state supreme court employs that many permanent research attorneys. The next highest number of research attorneys is in the supreme courts of Georgia, Alabama, and Oklahoma, and they employ only two research attorneys per Justice. Stephen R. Barnett, "The Bureaucourt," *California Lawyer*, Sept. 1996, p. 27, 28.

12. "The Shadow Court," *California Lawyer*, Jul. 1997, p. 43.

13. NIMBY is the familiar acronym for the Not In My Back Yard! cry of entrenched suburbanites opposing new development on "their" turf. By now, NIMBY has been supplemented by BANANA — Build Absolutely Nothing Anywhere Near Anybody, or even NOPE — Not On Planet Earth. Not to be outdone by their constituents, the regulators have coined an acronym of their own: NIMTOO — Not In My Term Of Office.

14. A classic example is provided by the notorious Warner Ridge case, where some $40 million was wasted on pointless litigation that in the end bankrupted the owners of a parcel of land in Woodland Hills, even though they were throughout trying to do no more than to build a project that was in full compliance with the law. For further details see Robert I. McMurry and Gideon Kanner, "The Shootout at Warner Ridge," *Los Angeles Lawyer*, Jan. 1995, p. 24.

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vard U. Press 1995) that the astronomical cost of California housing (the highest in the continental United States) has been brought about by an extreme regulatory regime in this state, and our judiciary's failure to interdict even its extreme manifestations. While this may play well with established suburbanites who acquired their homes decades ago (and are thus enjoying enormous six-figure equities), it raises havoc with the middle class and the young who increasingly discover that barring a lottery win or an inheritance, they stand little chance of living like their parents, or anywhere near them. It makes California less competitive because of our cost of housing.

This process also inspires urban sprawl. Young people and immigrants have to live somewhere. And so, developers tend to build what and where they can: typically large homes on the urban periphery where there are no established NIMBY neighbors pressuring local regulators to "keep them out" in the name of low growth. And so the urban sprawl consumes open land, lengthens commuting times and air pollution, frustrates efforts to provide efficient mass transit, and helps bring about an economic regime where two incomes per family are mandatory for family home ownership. During the recent recession, it also caused a "brain drain" as Californians discovered that they could sell their wildly appreciated homes, cash in their six-figure equities, and with the proceeds buy similar homes free and clear in Washington, Nevada or Utah, with a tidy nest egg to spare. California thus lost many accomplished, enterprising citizens to other states.

August 30th's *Los Angeles Times* carried three major articles painting a grim picture of the calamity that is overtaking the California housing market.

AUGUST 30TH'S *Los Angeles Times* carried three major articles painting a grim picture of the calamity that is overtaking the California housing market, and of the accelerating urban sprawl. As a result of misguided local government policies, developers build fewer but larger, more expensive homes in increasingly remote locations. Sixty-three percent of new Southern California homes are priced at more than $200,000, and the supply is falling drastically short of the region's needs. The existing median home in Los Angeles goes for $204,000, or 52 percent above the national average. To own a home, young Southland families increasingly have to move to remote locations (like Simi Valley, Santa Clarita, Valencia, Corona, Chino Hills, or La Verne). Though lower in housing cost, life in such locations exacts a horrendous price in lengthy commuting and an impaired family life. All this is the end product of a parochial mentality of local government functionaries secure in their belief that they can do anything to pander to the self-interest of their existing NIMBY constituents, and can simply deny rational use of land available in their communities for badly needed housing without effective interdiction by the California courts, no matter how extreme, unreasonable, or unconstitutional the local land-use regulations may be.

In the end, it seems quite plain that instead of performing its proper function as an ideologically neutral arbiter of disputes, that does its best to balance competing rights, the California Supreme Court has been taking sides and has come down on the side of those political and ideological forces that disfavor constitutionally protected property rights. This is unfortunate for many reasons, the most important of which is that — as U.S. Supreme Court Justice Potter Stewart once put it — the dichotomy between personal liberties and property rights is a false one. Property doesn't have rights; people have rights, and both kinds of rights, personal and property, are interdependent and neither can have meaning without the other. That is why there are no societies in which a high degree of personal and political liberties does not correlate strongly with a like degree of economic liberties. The California Supreme Court has been oblivious to these considerations for the past quarter century. It has, moreover, not faithfully followed the law of the land as laid down by the U.S. Supreme Court.

Former Chief Justice Malcolm Lucas rightly voiced his concern that over 50 percent of Californians rate courts as only "poor" or "fair."[15] That is indeed unfortunate, and is a trend that we should all work to reverse. The recognition by our highest Court that law abiding citizens who seek no more than to use their property (on which they are taxed on the assumption that its value reflects its highest and best use) have constitutional rights as well as do citizens guilty of antisocial behavior, would be a step in the right direction. CPP

15. Malcolm M. Lucas, "Introduction" [to Special Report on California Appellate Justice], 45 *Hastings Law Journal* 419, 421 (1994).

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Kurzweil

(Continued from page 19)

the announcements booming out of the public address system. It's a wonderful parable, like the fable *The Emperors New Clothes*, of the bureaucratizing impulse, the *reductio ad absurdum* of the spirit of the technician.

Not that pioneers without a constructive outlet for their abilities cannot become equally absurd, destructive, or both: Rube Goldberg or, when the impulse drives men to play God, Nikolai Lenin. But the impulse of the technicians — a class that includes many conservatives — to write off all pioneers as "fanatics" leaves a lifeless machine, a process carried on for its own sake, a "fellowship" without love. It will finally fall of its own useless, meaningless weight. Eric Hoffer, author of the 1951 book *The True Believer*, became a hero to some conservatives by denouncing communists for their perversely destructive "idealism," but Hoffer considered faith in anything larger than oneself dangerous. "Faith in a holy cause is to a considerable extent a substitute for the lost faith in ourselves," he wrote.* "The religious character of the Bolshevik and Nazi revolutions is generally recognized. The hammer and sickle and the swastika are in a class with the cross. The ceremonial of their parades is as the ceremonial of a religious procession. They have articles of faith, saints, martyrs and holy sepulchers." Thus speaks the Happy Technophile, unable to distinguish Jesus Christ from Joseph Stalin.

By their natures, pioneers tend to lead the world. Technicians follow, applying the pioneers' work to the large scale and making it run efficiently. Sustained progress of any sort, for good or for evil, requires the talents, enthusiasms, the direction-giving, and tempering influences of both. American politics is dispiriting because the Republicans are top-heavy with technicians and the Democrats with pioneers. Like good technicians, Republicans tend to figure out how things work but do a terrible job of inspiring people to follow them. Like good pioneers, Democrats endlessly stress moral concerns that fire the minds and passions, but they then lead their flocks into one grandiose futility after another. The stunning potential we humans possess becomes evident when some gifted Democrat tires of the futility and moves over to the conservative side, wedding his vision to common sense — a Ronald Reagan, a David Horowitz, a Ron Unz, or a Joseph Farah, for several instances. They generally have trouble with the Party establishment, but go about their business getting done what Republican leaders talk about year after year but somehow never seem to make any progress toward achieving.

Give me a man in love; he knows what I mean. Give me one who yearns; give me one who is hungry; give me one far away in this desert, who is thirsty and sighs for the spring of the Eternal Country. Give me that sort of man; he knows what I mean. But if I speak to a cold man, he doesn't know what I am talking about.

— St. Augustine

THE SERIOUS question for Republicans is: why does our side attract so few of the pioneer type? Journalism, education, Hollywood, even much of established religion — the nation's intellectual and moral centers — are full of lefties. Why? Because Hoffer, in one sense, was right. Communism and Nazism are religions, and pioneers require a faith in something larger than themselves. These people once found a home in the God-oriented religions of Western civilization and produced the wisdom whose political culmination was the political culture of the United States, described best, perhaps, in Alexis de Tocqueville's *Democracy in America*.

In Europe this happy circumstance began to end half a millennium ago, leaving these pioneering souls to seek solace in the world-oriented religions of materialism. This *unhappy* circumstance led directly to three major upheavals: the French Revolution, the Russian Revolution/Soviet Empire, and Nazism, as these natural leaders, bereft of a God to lead *them*, instead placed their faith in man who, as God, can only become tyrant.

A well-meaning intellectual — it may have been Sidney Hook — once remarked that if God didn't exist, we would have to invent Him. That's just what the left has been doing for the past two centuries, substituting man for God. As an effort to establish Heaven on Earth, it is a futile enterprise. But as a *political* endeavor to take power from the technological classes, it rarely fails and, more to the point, it *never* gives up. A recent issue of *Heterodoxy*, for instance, bemoaned in disbelief an apparent resurgence of enthusiasm for real full-blooded communism, of all things, in places like the *New York Times*. Will they never learn? the article's writer asked in anguish. But learning is not the point. Men must have faith, at least those men do who shape the world.

With faith in God, not in men and the world, our forefathers built what we conservatives say we want to conserve. The way is plain: to conserve its fruits, restore the faith. CPR

**I am indebted to Hugh Hewitt for these quotes which he culled from* The True Believer *and reproduced in his new book* The Embarrassed Believer, *Word Publishing, 1998.*

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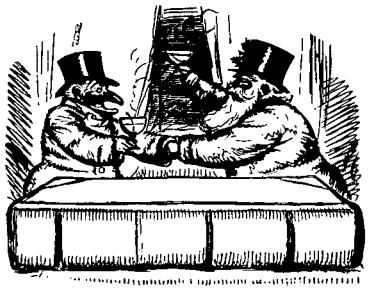

CRITICUS

Dogged Daze

BY G.B. TENNYSON

IT'S THAT time of year when searing heat takes over and nothing seems to happen, when even President Cigar's real-life enactment of a movie script seems less gripping than the fact that Criticus was obliged to suffer 33 days without air-conditioning in a house with all the windows thrown open to the harmattan winds by well-meaning but effectively fiendish Korean housepainters all named Kim. As Constant Readers will know, it is conditions like these that drive a dazed but dedicated Criticus to his odds-and-ends bag, the collection of intellectual and cultural flotsam that he has harpooned over the past year as his ship moved through the sea of life in its eternal and fruitless search for safe harbor. In short, it's the Dog Days of summer and time for a Critical Miscellany of blunders, follies, fanfaronades, and even occasional serendipities.

BLUNDERS

AS HIMSELF a longtime editor of both books and serial publications, Criticus is sympathetic to the fact that even the most hawk-eyed proofreader will occasionally miss a beat and let pass an error that is not merely a typo but an inadvertently comic or misleading one. This has been true since the earliest days of printing, the classic example thereof being the famous "Wicked Bible" of 1631 in which a printer dropped the word "not" from the Seventh Commandment, the one (the Sixth, in Roman Catholic Bibles), in case you have forgotten, about adultery. This is now known as the Clinton Bible. Such a masterstroke has given us all something to aim at. Recently Criticus was especially taken with four (of many) attempts which, while relatively minor, did give pause as well as amusement in the heat of the day.

— from a national publication well known to readers of *CPR:* "His answer, not surprisingly, has do do with the extent to which governments respect private property and freedom of contract."
— from an advertisement by a book club well known to *CPR* readers: "A fascinating treatment that we can all profit by dipping into."
— from an invitation to Criticus from one of his many *almae matres:* "Please come and join President X for bunch and a discussion . . . " etc.
— from a Los Angeles television station broadcast on July 4 about a restaging of the Battle of Lexington, with shots of Minutemen and Redcoats: "We see Union and Confederate troops going at it."

FOLLIES

WELL, SOME follies are greater than others, such as the grandiose structures the rich used to build in the English countryside more or less for the sheer extravagance of it all. The most celebrated was the quixotic William Beckford's

G.B. Tennyson is CPR's *culture vulture and a sedulous snapper-up of unconsidered trifles. He sometimes teaches English at UCLA.*

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Fonthill Abbey which took eighteen years to build at the huge cost of £273,000 to be sold 1822 for the even greater sum of £330,000, only to have its 260-foot high tower collapse in a heap three years later. We have our architectural follies, too, as well as those of plain human silliness. Here's one of each.

— **A Wedding.** Back in the flower power era Criticus attended one of those do-it-yourself beach weddings where everyone stood awkwardly about in the sand hoping this was a dog-free beach while listening to the couple's own version of marriage vows. On a different occasion from the same era Criticus attended yet another D-I-Y wedding, this one poolside at a private home and conducted jointly by a priest and a rabbi, signs of the cross being made beneath the hoopah as the ceremonial wine glasses shattered. And we've all seen on television couples being married underwater, on ski slopes, during athletic contests, suspended from bungee cords, and/or dressed as bunnies, bears, and probably nowadays as beanie babies. Even so, Criticus was taken aback by a report from a most reliable witness of a wedding staged as a version of Pirates of the Caribbean. Yes, the groom and his men were dressed as pirates, the bride and her maids as tavern wenches. The ceremony, held, alas, on a Sunday in a rented hall in a retirement home, began with the drama of a struggle among the pirates to carry off the arch-wench and ended of course with the groom-pirate triumphing and the entire company then lining up before a rent-a-pastor for another home-crafted wedding ceremony. It looks as though the Sixties still need a stake through the heart.

Heroes, leaders, mentors, and guides all seem in our time to have deliquesced into role models, as though one were talking about a kind of impersonation.

— **The Getty.** Constant Readers will recall that in the past Criticus expressed some reservations about the Getty before having visited it, noting that despite the banners proclaiming "It's your Getty" there were some disquieting similarities to castles on the Rhine which were designed to be *in*accessible. Since then Criticus has actually visited the Getty. It was no easy feat, for parking is booked well into the autumn, but the kindness of a colleague enabled me to join a special group attending an evening concert which carried with it the right to park and visit the museum as well. It was a blistering day when Brentwood and Banning had the same temperature with not a hint of a zephyr coming to the former from the nearby sea. Well, I can now report from the top looking down rather than as before from the other direction. First, the much-touted views have been rather over-touted; the buildings keep getting in the way. It should all have been built at least a dozen feet higher. If you want to go view-hunting, you could do better from many points in the Hollywood Hills, say, from Griffith Observatory, or along Mulholland Drive. The buildings themselves are a bit of a muddle, huge slabs of stone on formidably high walls jostling up against what look like science labs at a medical school, vast walkways of polished marble paralleled by oddly soulless ponds and water courses, many with barren but enormously expensive rocks projecting out. I am reliably informed by an architectural buff that all this is characteristically post-modern architecture, or, as he off-puttingly put it, "po-mo" architecture, which he further explained was essentially deconstructive. Quite. Strangely, this po-mo style shares some of the characteristics of old-fashioned, post-war California public architecture: it has no front or back, no main entrance but many apparent exits. Also, very few restrooms and those few very hard to find. To think that the designers of junior college campuses were so many years ahead of their time. Worse, to think that now when deconstruction has been deconstructed in literary criticism, it surfaces in architecture. The mediaeval cathedral has been well described a sermon in stone. Po-mo architecture looks more like yesterday's crumpled and discarded newspaper in marble.

FANFARONADES

Criticus wants to give this useful word wider currency, so in case the term is unfamiliar, let it be noted that it means bluster, swagger, or arrogant and boastful talk or behavior, reaching English from French which took it from Spanish which adapted it from an Arabic word for garrulous. It is related to the common word *fanfare.* I am using it here to mean any sort of broad public discourse or conduct that I find offensive and pretentious, which of course covers a lot of ground.

— **Role Models.** I have never liked the term "role model." It has the smell of psychobabble about it; besides, it lacks euphony, as do so many double noun constructions-"learning experience," "parenting skills," "download activation," and countless more — which sound like English trying to be German. A role model itself is nothing more than an example presumed to be

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worthy of imitation by lesser, especially younger, folk. Heroes, leaders, mentors, and guides all seem in our time to have deliquesced into role models, as though one were talking about a kind of impersonation. The term apparently gained currency with the rise to quasi-religious status of professional athletics. One even suspects it may have started life as a substitute for that old standby of being a credit to one's people. Soon, however, everyone was a role model. Not only parents and teachers and preachers, who had always been taken to be examples for the young, but actors and actresses, base- basket- foot- and every other kind of ball-player, cheerleaders and concubines, muppets, teletubbies, and wicked Joe Camel. Which is to say that role models could be bad as well as good, and eternal vigilance must needs be exercised to keep the bad ones out of sight. Fortunately for a yearning America, we had two supremely virtuous examples at the very apex of role model-dom — in the White House. It did cheer the Critical heart to see the Sunday Bible-toting Bill on Monday un-role-model himself for even the dimmest wit in his four-minute pout. And that mean-spirited Criticus fell about laughing when he realized that the one quality that will be forever associated with Hillary is the one that of course she said at the outset would never characterize her, namely that she stood by her man. Surely we can now look forward to "Hillary Rodham Clinton's Cookie Recipe Book." At least Tammy Wynette never came out with one of those, though she certainly did stand by her man: of course stalwart Tammy had five husbands, so she had plenty of opportunities to live out her song. Hillary has some catching up to do.

And as coda, did you notice that the media apologists and left-wing talk radio callers (yes, there are plenty of them) suddenly began disparaging the idea that the President ever was or ever should be a role model? Or that anyone else ever was or ever should be? Only parents, they solemnly declared. Good. Now we can send the term where they sent Joe Camel.

— **The Queen of Tears.** Along with Billary one could also cite the unsuitability as role model of Diana, Princess of Wales, but what strikes Criticus as more interesting about Diana than mere role-modelling is the way in which this unlikely person illustrates the nature of religious *cultus*. Even allowing that the media in feasting on Diana alive or dead have greatly contributed to her glorification, so that she was/is both beneficiary and victim of a celebrity-crazed culture, the public response to her death is the stuff of which the veneration of saints is made. Of course, the dolls, the mugs, the tea towels, the boxes of butter with her signature, the commemorative postage stamps from obscure countries, the newly hybridized roses named for her, the plate bearing her likeness and playing "Candle in the Wind," the recent application by Harrods for trademark of the treacly nickname "Dodi," the forthcoming off-Broadway musical called naturally "Queen of Hearts" (Diana looks at Camilla Parker Bowles and sings "What if he still loves her?"), the museum with her schoolgirl memorabilia, and the burial on an island that can be viewed only from afar — all these things have more than a touch of vulgarity about them. That Diana's petulant brother should have announced that he did not want the Althorp shrine to become a Graceland (although he has applied for trademark status for the word "Althorp" in case he should want to market deodorant and the like), serves only to make clear that it will inevitably become just that, a Graceland, for in truth Diana is an Elvis for the middle classes. Just as Trailer Trash make pilgrimages to Graceland and sight Elvis hovering over shopping malls, so the better-heeled go to Paris and buy tours in Mercedeses of Diana's last ride from the Ritz through the tunnel and all the way to the hospital where she died. We may expect teenage girls to start seeing visions of her on her Lady-of-Shallot-like island and in Kensington Gardens as well. As I say, this is the way in which the cults of saints arise, the problem with both Elvis and Diana being that they are most unsuited for sainthood. Their cults, however simultaneously poignant and ludicrous they are, serve to illustrate that humankind has an enduring need for saints and heroes (not role models), and that in the absence of real ones, plastic ones will be pressed into service. It looks as though the only way to save the Clinton presidency and his "legacy" would be for the First Couple to go down, so to say, aboard Walter Cronkite's yacht in a dramatic collision with an iceberg off the New England coast while being pursued by *paparazzi* in speedboats.

— **Speaking of Saints.** If Elvis and Di are plastic, what are we to make of the new stone figures that adorn the front of Westminster Abbey? To be sure, the Church of England is known for its tolerance of eccentric characters, from the once famous Red Dean of Canterbury to the Bishop who doubted the Virgin Birth and in be-

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tween hosts of dotty vicars and drunken beneficiaries of multiple livings (see Trollope's ecclesiastical novels for a fair sampling), but at least these characters were all nominally members of the Church of England itself. Likewise, within the churches the statues, effigies, and depictions in stained glass were of the holy and devout or at least of local lords, ladies, and benefactors, and sometimes their faithful canine companions, all good Anglicans. The Abbey may have stretched this a bit in the Poets' Corner, which memorializes some dubiously pious authors, but with the new entrance statuary the authorities have surely gone too far. Installed now on the gothic front in niches that have, as it was demurely put, "lain empty since the middle ages" (*i.e.*, since reformist zeal ripped the old saints down), are ten twentieth-century Christian martyrs of which number, only three are Anglicans. The others are variously Roman Catholic, Lutheran, Orthodox, Presbyterian, and, yes, even a Baptist. Possibly there haven't been ten Anglican martyrs in the twentieth century, though this seems unlikely, especially in the light of the remarks of the subdean of the Abbey at the dedication ceremony, who noted that this century has been the bloodiest in history and "has created a roll of Christian martyrs far exceeding that of any period in the Christian Church." Surely ten were C of E. So obviously the ecumenical choice out of such abundance was intentional; it was even designed to reflect martyrs from all the continents, and the selectors managed to come up with three females, three blacks, and two Asians, but only one canonized saint. Without raising the many other charges against Martin Luther King, Jr. (which a vast left-wing conspiracy would suppress anyway), one may well question whether King was in the same sense as the other nine a *Christian* martyr any more than, say, the brothers Kennedy. One may also well question whether this whole politically correct gathering really ought to have been placed in the very front entrance, instead of, say, in a Martyrs' Corner where they could have been memorialized with a window with their faces all jumbled together in stained glass that contained all the colors of the Olympic rings. At least the dreadsome ten stone figures are placed below the ancient statues of the Virgin and John the Baptist. Of course, one of these (guess which) is going to have to go when the time comes to install the statue of Princess Diana.

SERENDIPITIES

As EVERY schoolboy knows, *serendipity* is the faculty of encountering happy and unexpected events and benefits, a term coined by Horace Walpole after reading a fairy story called *The Three Princes of Serendip,* an ancient name for Ceylon. A few such occurrences in near proximity encourage one to think, however briefly, that God is indeed in His Heaven and that all, or at least much, is right with the world. Here are two.

— **CONSTANT COMMENT.** Criticus has his much appreciated Constant Readers who are so dedicated that they number themselves in order of historical precedence like peers of the realm, the Mistress of the Rolls being Jan Edwards, who is not surprisingly Constant Reader Number One. But Criticus is also blessed with a subchapter of the Confraternity of Constant Readers, this being those who are also Constant Writers, that is, constant writers of encouraging words and notes to Criticus himself. This exclusive group numbers only two, and they shall remain anonymous in that their communications are not letters to the editor but private words to Criticus. One of them, I am told, occasionally writes, also privately to an editor she calls "Scalawag," under the *nom de plume* of "Old Crone" in honor of the Criticus piece about the recently created Antipodean religious ceremony of "croning." This same Constant Reader-Writer recently communicated with Criticus regarding his piece on horse racing and specifically his remarks about Santa Anita. What she had to say was so interesting and informative about the track and about times now past that it can only be seen as a bit of serendipity that ought to be shared with others. Here it is, slightly edited for space:

A HINT ABOUT HOW YOU CAN WIN AT THE RACES

My family settled in Monrovia in the 1880s. All of Monrovia watched with great interest as the Santa Anita Racetrack was built, and most of the residents (who approved) attended opening day on December 25. I'm not sure if it was 1931 or 1932.

Eventually it got to be Easter. My grandmother was considered a great horsewoman of the ride-across-the-prairie-bareback type .... She could pick a winning horse at the races but she wouldn't bet because she wouldn't take a chance on losing $2. She would go to the paddock and compare the horses for a particular race. When I asked her what she'd look for she'd say "the withers." I pressed her for details. She never told me. I received the impression it took an experienced horse person to do the comparing. At least this gives you a place to start. Take a look at the winner's withers and find the horse in the next race that has similar withers and see what it does. Clear?

Opening Day at Santa Anita, being in December, it became dark before people who waited through the last race could get to their cars. No parking lot signs or lights were in place yet, so people were wandering around for hours looking for their cars. Fortunately my father had a wonderful sense of direction, so we found ours and took several people home. Many left their cars there until the next day ....

And so we learn, not only to study the withers but

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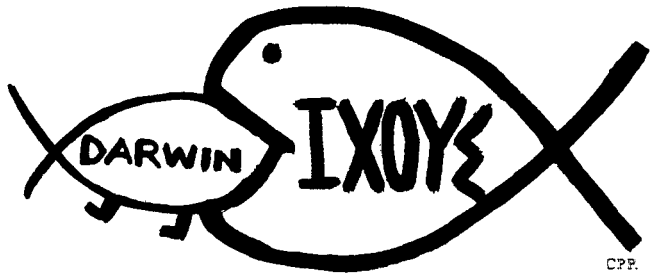
also to remember the days when you could safely leave a gaggle of cars in an open field overnight.

— **Icthys's Revenge.** Constant Readers will recall that some time ago Criticus adverted to the warring symbols in the debate on evolution, namely, the Christian fish and the Darwinian creeping amphibian. The latest installment in the exchange popped up on a vehicle that recently drove past the Critical eye. It looks like this:



BOOKS

Wise Policy: an Armed Citizenry

BY PETER HANNAFORD

UNTIL RECENTLY, for most Americans Switzerland's image consisted of Heidi, cuckoo clocks, yodelers, precision watches, cheese, and high mountains. Today, it seems to consist of greedy bankers who, if they weren't colluding with the Nazis in World War II, profited from their evil deeds. Both images are great oversimplifications, and *Target Switzerland* goes far to give us a deeper, more accurate picture of this fiercely independent small country.

It is no accident that Switzerland has remained free and democratic for nearly all the years since 1291 when three cantons banded together in mutual defense. The three grew to 26 and have resisted numerous invasions over the centuries. Following a defeat in battle with French forces in northern Italy in 1515, the Swiss committed themselves to permanent armed neutrality, decided never again to venture beyond their borders militarily and prepared themselves to fend off any hostile neighbors. The tradition of a citizen army in Switzerland dates from those days. The famous Florentine Nicolo Machiavelli wrote, "... the Swiss are well-armed and enjoy great freedom." To this day, all Swiss able-bodied adult males are required to take military training, then to maintain their Army rifles and ammunition in their homes, ready to be used in case of national emergency.

Target Switzerland
Swiss Armed Neutrality in World War II

Stephen P. Halbrook, Ph.D.

Sarpedon Publishers, Rockville Centre, New York, 1998, 274 pages, $25, cloth

Switzerland's decentralized democratic system and citizen army were subjects of fascination to our own Founding Fathers, according to Halbrook. John Adams, for example, wrote extensively of the governance of the Swiss cantons. And George Mason went so far as to propose a three-member presidency for the United States, modeled after the Swiss Federal Council. We learn from Halbrook that two amendments to our own Constitution, the Second (the right to bear arms) and the Tenth (powers not delegated to the federal government are reserved to the states), "bear the imprint of Swiss influence."

With a land mass about the size of Maryland, Switzerland has long relied on superior military training and good equipment, combined with its passion for democracy, to discourage potential invaders. When World War I began, some German-speaking Swiss were sympathetic to the Central Powers, but, according to Halbrook, after "Germany's invasion of neutral Belgium, the Central Powers were seen more and more to represent anti-democratic forces contrary to Swiss traditions of individual liberty and democratic government."

In January 1933, when Hitler came to power in Germany, the Swiss were immediately suspicious of his intentions. The Swiss press,

Peter Hannaford's latest book is Recollections of Reagan *(William Morrow & Co., New York, 1997).*

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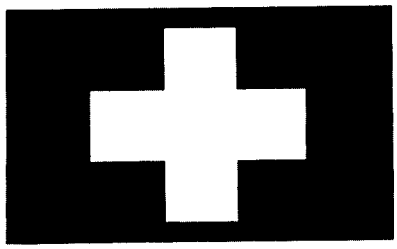
always free, reacted negatively to the news. The potential military threat was clear. One Nazi military theorist, Ewald Banse, wrote that a rearmed Germany should invade France through Switzerland. He asserted that "Swiss neutrality, in fact, is of service only to the French ..."

The Swiss government lost no time curbing Nazi sympathizers. On May 12, 1933, the Federal Council prohibited wearing "Hitlerite" uniforms and insignia. The 1933 edition of the Swiss Army manual issued to each male reaching military service age, included this preamble: "In combat, I have my rifle to overcome the enemy. It is the symbol of the independence and force of my fatherland, Switzerland, which I love and which I want to defend ... to the last drop of my blood."

U.S. Ambassador to Switzerland Hugh Wilson said of the Swiss citizen-soldier during his tenure (1927-37), "... he spends many of his Sundays qualifying for marksmanship awards with his friends in his community, as men of other nationalities spend their leisure at golf, fishing, or other recreation."

According to Halbrook, "... the Swiss were remarkably united from 1933 on in their distaste for the racist and anti-democratic bent of the Nazis." If the Nazis thought that the approximately 70 percent of Swiss who were German-speaking would be sympathetic to their cause, they were much mistaken. The Nazi absorption of Austria in 1938 served as a caution to the Swiss. They expected to be next. Immediately following *anschluss,* the Swiss Federal Council declared that "The Swiss people are united in the determination to defend at any cost, to the last breath and against anyone, the incomparable country which is theirs by God's will." The Swiss government backed its words with action. The *New York Times* reported that military service was extended, negotiations were opened with U.S. firms to buy new fighter planes, the supply of tanks was increased, gold was moved inland, and the frontiers were strengthened.



Switzerland was never morally neutral; her people have always sided with freedom and democracy.

AFTER THE September 1938 appeasement of Hitler by the allies over Czechoslovakia, the German propaganda machine turned its force on Switzerland. Not intimidated, the Swiss soon began calling up reserves and, by the time Hitler invaded Poland, in September 1939, the Swiss had a higher percentage of her population mobilized than any other European neutral country. The author contends that "...the Swiss adopted a sophisticated defensive posture in World War II relying on the terrain of the country and the natural abilities of its shooters to repel foes." He cites several instances (the latest in 1944) when the German general staff drew up detailed plans to invade Switzerland, only to lay them aside because they calculated that the cost in men and equipment would not justify the benefits (control of Alpine passes).

Under the leadership of General Henri Guisan (a colonel in the peacetime army, elevated to be commander-in-chief and the only general in the army during the war), the Swiss planned to defend the vulnerable area around Basel in the northwest as long as possible, then draw back to an alpine *Reduit National* — a national redoubt. There, superior Swiss marksmanship could command the heights over passes and pin down otherwise fast-moving *panzer* forces. Halbrook writes: "This was not *panzer* country. Tanks would have had access only through narrow valley routes, and the bridges and roads were rigged with explosives." General Guisan issued a declaration to the effect that if there were an invasion and the Federal Council told people to lay down their arms, it was to be ignored since it would be assumed to be enemy propaganda.

The author provides considerable detail — none of it boring — about German invasion plans and Swiss actions to thwart and deter invasion. He concludes about Switzerland: "She has been neutral in military conflicts, but was never morally neutral; her people have always sided with freedom and democracy. The Swiss traditions were put to the supreme test during World War II and were vindicated."

The Swiss, like everyone else, weren't and aren't perfect, but unlike the armchair yuppie moralizers in today's news media, they did face a supreme test and did not hesitate to risk their lives for their freedom. CPR

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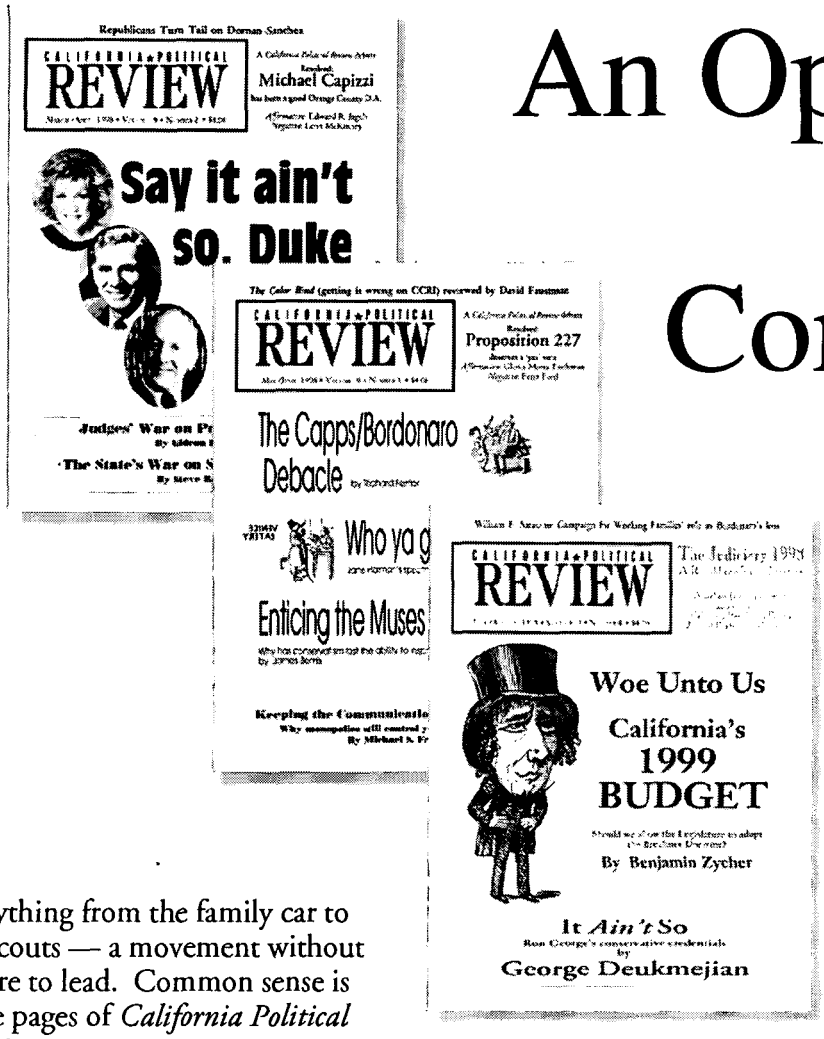
An Opening for Common Sense



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— Irving Kristol

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